

IDAHO ADMINISTRATIVE BULLETIN

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January 6, 1999

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Preface

The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all administrative rule-making documents in Idaho. The Bulletin publishes the official text notice and full text of such actions.

State agencies are required to provide public notice of rule-making activity and invite public input. The public receives notice of a rule-making activity through the Idaho Administrative Bulletin and the Legal Notice published monthly in local newspapers. The Legal Notice provides reasonable opportunity for public input, either oral or written, which may be presented to the agency within the time and manner specified in the Legal Notice. After the comment period closes, the agency considers fully all information submitted in regard to the rule. Comment periods are not provided in temporary or final rule-making activities.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin 98-1 refers to the first Bulletin issued in calendar year 1998, Bulletin 99-1 refers to the first Bulletin issued in calendar year 1999, etc. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 1 refers to January; Volume No. 2 refers to February; and so forth. Example: The Bulletin published in January of 1999 is cited as Volume 99-1. The December 1998 Bulletin is cited as Volume 98-12.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

*The Idaho Administrative Code is published once a year and is a compilation or supplemental compilation of all final and enforceable administrative rules in effect in Idaho. In an effort to provide the reader with current, enforceable rules, temporary rules are also published in the Administrative Code. Temporary rules and final rules that have been approved by the legislature during the legislative session, and published in the monthly Idaho Administrative Bulletin, supplement the Administrative Code. Negotiated, proposed, and pending rules are **not** printed in the Administrative Code and are published only in the Bulletin.*

*To determine if a particular rule remains in effect, or to determine if a change has occurred, the reader should refer to the **Cumulative Index of Administrative Rule-Making**, printed in each Bulletin.*

TYPES OF RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

The state of Idaho administrative rule-making process comprises five distinct activities; Proposed, Negotiated, Temporary, Pending, and Final rule-making. In the majority of cases, the process begins with proposed rule-making and ends with final rule-making. The following is a brief explanation of each type of administrative rule.

NEGOTIATED RULE

Negotiated rule-making is a process in which all interested parties and the agency seek a consensus on the content of the rule. Agencies are encouraged to proceed through this informal rule-making whenever it is feasible to do so. Publication of the text in the Administrative Bulletin by the agency is optional. This process should lead the rule-making to the temporary and/or proposed rule stage.

PROPOSED RULE

A proposed rule-making is an action by an agency in which the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a notice of proposed rule-making in the Bulletin. The notice of proposed rule-making must include:

- a) the specific statutory authority for the rule-making including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rule-making;*
- b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;*
- c) the text of the proposed rule prepared in legislative format;*
- d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;*
- e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;*
- f) the manner in which persons may request an opportunity for an oral presentation; and*
- g) the deadline for public (written) comments on the proposed rule.*

As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rule-making criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date unless published in conjunction with a temporary rule docket. An agency may vacate a proposed rule-making if it decides not to proceed further with the promulgation process.

TEMPORARY RULE

Temporary rules may be adopted only when the governor finds that it is necessary for:

- a) the protection of the public health, safety, or welfare; or*
- b) compliance with deadlines in amendments to governing law or federal programs; or*
- c) conferring a benefit.*

If a rule-making meets any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule.

A temporary rule expires at the conclusion of the next succeeding regular session of the legislature unless the rule is approved, amended, or modified by concurrent resolution or when the rule has been replaced by a final rule.

In cases where the text of the temporary rule is the same as that of the proposed rule, the rule-making can be done concurrently as a temporary/proposed rule. State law requires that the text of a proposed or temporary rule be published in the Administrative Bulletin. Combining the rule-making allows for a single publication of the text.

An agency may rescind a temporary rule that has been adopted and is in effect if the rule is being replaced by a new temporary rule or has been published concurrently with a proposed rule-making that is being vacated.

PENDING RULE

A pending rule is a rule that has been adopted by an agency under the regular rule-making process and

remains subject to legislative review before it becomes a final, enforceable rule.

When a pending rule is published in the Bulletin, the agency is required to include certain information in the Notice of Pending Rule. This includes:

- a) the reasons for adopting the rule;*
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;*
- c) the date the pending rule will become final and effective; and*
- d) an identification of any portion of the rule imposing or increasing a fee or charge.*

Agencies are required to republish the text of the rule when substantive changes have been made to the proposed rule. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule. With the permission of the Rules Coordinator, only the Section(s) that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the Notice of Pending Rule is published.

FINAL RULE

A final rule is a rule that has been adopted by an agency under the regular rule-making process and is in effect.

No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that the agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution will be adopted rejecting, amending, or modifying the rule or any part thereof. A Notice of Final Rule must be published in the Idaho Administrative Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule that has been reviewed by the legislature and has not been rejected, amended, or modified will become final with no further legislative action. No rule shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. However, a rule which is final and effective may be applied retroactively, as provided in the rule.

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

The Idaho Administrative Code and all monthly Bulletins are available for viewing and use by the public in all 44 county law libraries, state university and college and community college libraries, the state law library, the state library, the Public Libraries in Boise, Pocatello, Idaho Falls and Twin Falls, the Lewiston City Library, East Bonner County Library, Eastern Idaho Technical College Library, Ricks College Library, and Northwest Nazarene College Library.

SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs of publications, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-0004, telephone

(208) 334-3577.

The Administrative Bulletin is an official monthly publication of the State of Idaho. Yearly subscriptions or individual copies are available for purchase.

The Administrative Code, is an annual compilation or supplemental compilation of all final and enforceable temporary administrative rules and includes tables of contents, reference guides, and a subject index.

Individual Rule Chapters and Individual Rule-Making Dockets, are specific portions of the Bulletin and Administrative Code produced on demand.

Internet Access - The Administrative Code and Administrative Bulletin are available on the Internet at the following address:

<http://www.state.id.us/> - from Idaho Home Page select the Administrative Rules link.

EDITOR'S NOTE: All rules are subject to frequent change. Users should reference all current issues of the Administrative Bulletin for negotiated, temporary, proposed, pending, and final changes to all rules, or call the Office of the Administrative Rules at (208) 334-3577.

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

Rule-making documents produced by state agencies and published in the *Idaho Administrative Bulletin* are organized by a numbering system. Each state agency has a two-digit identification code number known as the "IDAPA" number. (The "IDAPA" Codes are listed in the alphabetical/numerical index at the end of this Preface.) Within each agency there are divisions or departments to which a two-digit "TITLE" number is assigned. There are "CHAPTER" numbers assigned within the Title and the rule text is divided among major sections with a number of subsections. An example IDAPA number is as follows:

IDAPA 38.05.01.060.02.c.ii.

"IDAPA" refers to Administrative Rules in general that are subject to the Administrative Procedures Act and are required by this act to be published in the Idaho Administrative Code and the Idaho Administrative Bulletin.

"IDAPA 38." refers to the Idaho Department of Administration.

"05." refers to Title 05 which is the Department of Administration's Division of Purchasing.

"01." refers to Chapter 01 of Title 05, "Rules of the Division of Purchasing".

"060." refers to Major Section 060, "Content of the Invitation to Bid".

"02." refers to Subsection 060.02.

"c." refers to Subsection 060.02.c.

"ii." refers to Subsection 060.02.c.ii.

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rule-making actions (documents) are assigned a "DOCKET NUMBER". The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-9901). The docket numbers are published sequentially by IDAPA designation (e.g. the two-digit agency code). The following example is a breakdown of a typical rule docket:

"DOCKET NO. 38-0501-9901"

"38-" denotes the agency's IDAPA number; in this case the Department of Administration.

"0501-" refers to the TITLE AND CHAPTER numbers of the agency rule being promulgated; in this case the Division of Purchasing (TITLE 05), "Rules of the Division of Purchasing (Chapter 01).

"9901" denotes the year and sequential order of the docket submitted and published during the year; in this case the first rule-making action of the chapter published in calendar year 1999.

Within each Docket, only the affected sections of chapters are printed. (see **Sections Affected Index** in each Bulletin for a listing of these.) The individual sections affected are printed in the Bulletin sequentially (e.g. Section "200" appears before Section "345" and so on). Whenever the sequence of the numbering is broken the following statement will appear:

"(BREAK IN CONTINUITY OF SECTIONS)"

INTERNAL AND EXTERNAL CITATIONS TO ADMINISTRATIVE RULES IN THE CODE AND BULLETIN

When making a citation to another Section or Subsection that is part of the same rule, a typical internal citation may appear as follows:

"...as found in Section 201 of this rule." OR "...in accordance with Subsection 201.06.c. of this rule."

It may also be cited to include the IDAPA, Title, and Chapter number also, as follows:

"...in accordance with IDAPA 38.05.01.201."

"38" denotes the IDAPA number of the agency.

"05" denotes the TITLE number of the agency rule.

"01" denotes the Chapter number of the agency rule.

"201" references the main Section number of the rule that is being cited.

Citations made within a rule to a different rule chapter (external citation) should also include the name of the Department and the name of the rule chapter being referenced, as well as the IDAPA, Title, and Chapter numbers. The following is a typical example of an external citation to another rule chapter:

"...as outlined in the Rules of the Department of Administration, IDAPA 38.04.04, 'Rules Governing Capitol Mall Parking.'"

BULLETIN PUBLICATION SCHEDULE FOR 1999

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date
99-1	January, 1999	November 18, 1998	January 6, 1999
99-2	February, 1999	December 23, 1998	February 3, 1999
99-3	March, 1999	January 20, 1999	March 3, 1999
99-4	April, 1999	February 24, 1999	April 7, 1999
99-5	May, 1999	March 24, 1999	May 5, 1999
99-6	June, 1999	April 21, 1999	June 2, 1999
99-7	July, 1999	May 26, 1999	July 7, 1999
99-8	August, 1999	June 23, 1999	August 4, 1999
99-9	September, 1999	July 21, 1999	September 1, 1999
99-10	October, 1999	August 25, 1999	October 6, 1999
99-11	November, 1999	September 22, 1999	November 3, 1999
99-12	December, 1999	October 20, 1999	December 1, 1999

BULLETIN PUBLICATION SCHEDULE FOR 2000

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date
00-1	January, 2000	November 17, 1999	January 5, 2000
00-2	February, 2000	December 22, 1999	February 2, 2000
00-3	March, 2000	January 19, 2000	March 1, 2000
00-4	April, 2000	February 23, 2000	April 5, 2000
00-5	May, 2000	March 22, 2000	May 3, 2000
00-6	June, 2000	April 19, 2000	June 7, 2000
00-7	July, 2000	May 24, 2000	July 5, 2000
00-8	August, 2000	June 21, 2000	August 2, 2000
00-9	September, 2000	July 19, 2000	September 6, 2000
00-10	October, 2000	August 22, 2000	October 4, 2000
00-11	November, 2000	September 20, 2000	November 1, 2000
00-12	December, 2000	October 25, 2000	December 6, 2000

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THE OFFICE OF THE GOVERNOR

EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE

EXECUTIVE ORDER NO. 98-12

CONTINUATION OF A STATE HOUSING TAX CREDIT AGENCY
REPLACING EXECUTIVE ORDER NO. 94-12

WHEREAS, the United States Congress has enacted and amended the Internal Revenue Code of 1986 (the "Code"); and

WHEREAS, Section 42 of the Code authorizes a Low-Income Housing Credit; and

WHEREAS, Section 42(h) of the Code stipulates that the Housing Credit is subject to certain restrictions regarding the aggregate credit allowable with respect to projects located in a state; and

WHEREAS, the Idaho Housing and Finance Association was created by the adoption of Title 67, Chapter 62 of the Idaho Code to increase the supply of housing for persons and families of low income and to encourage cooperation and coordination among private enterprise and state and local government to sponsor, build and rehabilitate residential housing for such persons and families; and

WHEREAS, in order to establish and continue an equitable process for the allocation of the allowable Low-Income Housing Credit for the State of Idaho, it is necessary and desirable to issue this Executive Order to provide authorization required under Section 42(h) for a State Housing Credit agency as defined in the Code;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the power vested in me do hereby order as follows:

Section 1: As used in the Executive Order:

(a) "Annual Report" means the report required from any agency which allocates any housing credit amount to any building for any calendar year, as specified in Section 42(1)(3) of the Code.

(b) "Code" means the Internal Revenue Code of 1986, as amended, and any related regulations.

(c) "Executive Director" means the Executive Director of the Idaho Housing and Finance Association or such other official or officials of the Idaho Housing and Finance Association as the Executive Director shall designate to carry out the duties set forth in this Executive Order.

(d) "Housing Credit Ceiling" means the dollar amount of State Housing Credit Ceiling applicable to any state for any calendar year in an amount based upon the applicable per capita limit and the State's population as determined in accordance with Section 42(h)(3) of the Code.

(e) "Idaho Housing and Finance Association" or "Association" means the Idaho Housing and Finance Association, an independent public body, corporate and politic, created by the Idaho Legislature under the provisions of Chapter 62, Title 67 of the Idaho Code, as amended.

(f) "Low-Income Housing Credit" means the federal tax credit authorized under Section 42 of the Code.

(g) "Qualified Low-Income Housing Project" means any project for residential rental property which meets the requirements of Section 42(g) of the Code; in general Section 42(g) of the Code pertains to the requirement that 20 percent of the units in the project be both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income, or that 40 percent of the units in the project be both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

(h) "State" means the State of Idaho.

(i) "State Housing Credit Agency" means the agency authorized to carry out the provisions of Section 42(h), Section 42(1) and Section 42(m) of the Code and in particular the Idaho Housing and Finance Association.

(j) "Year" means the period January 1 through December 31, inclusive, for each calendar year beginning January 1, 1998.

Section 2. The Code has created a Low-Income Housing Credit which can be granted by a State Housing Credit Agency for a Qualified Low-Income Housing Project.

The Code has further created a Housing Credit Ceiling which the state may use in any year to assist Qualified Low-Income Housing Projects during the allocation term.

Section 3. The state has delegated certain responsibilities and granted certain powers to the Idaho Housing and Finance Association in order that the supply of housing for persons and families of low income be increased and that coordination and cooperation among private enterprise, state and local government be encouraged to sponsor, build and rehabilitate residential housing for such persons and families.

Section 4. The state requires the development of a Qualified Allocation Plan described in Section 7(a) below for the allocation of the Low-Income Housing Credit in order to ensure fair and equal opportunity by interested parties in gaining an allocation of the Housing Credit Ceiling.

Section 5. The state requires the implementation of said Qualified Allocation Plan in order to ensure the proper use of such credits for Qualified Low-Income Housing Projects.

Section 6. An Annual Report shall be submitted to the Secretary of the Treasury and to the Governor of the State of Idaho with respect to the use of the Low-Income Housing Credit for any year.

Section 7. In consideration of the requirements of the state, the Governor appoints the Idaho Housing and Finance Association to act as the State Housing Credit Agency for the state in the distribution of the Housing Credit Ceiling for any year.

The Idaho Housing and Finance Association is required to:

(a) Establish a Qualified Allocation Plan as defined and provided for in Section 42(m) of the Code for the fair distribution of the Housing Credit Ceiling for the state;

(b) Distribute the Housing Credit Ceiling for Qualified Low-Income Housing Projects in the manner required under Section 42 of the Code.

(c) Submit an Annual Report to the Secretary of the Treasury and the Governor of the State of Idaho (at such time and in such manner as the Secretary shall prescribe) specifying:

(1) the amount of housing credit allocated to each building for such year;

(2) sufficient information to identify each such building and the taxpayer with respect thereto,

and

(3) such other information as the Code, the Secretary, the Governor or the Legislature of the State of Idaho may require.

Section 8. The state pledges and agrees with the owners of any Qualified Low-Income Housing Project for which an allocation of the Housing Credit Ceiling has been granted under this Executive Order that the state will not retroactively alter the allocation of the Housing Credit Ceiling to such project except as may be required under the terms of the Code.

Section 9. No action taken pursuant to this Executive Order shall be deemed to create an obligation, debt, or liability of the state.

Section 10. The purpose of this Executive Order is to maximize the opportunity for developing low-income housing units through the use of the Low-Income Housing Credit by providing a responsible State Housing Credit Agency within the meaning and requirements of Section 42 of the Code.

Section 11. This Executive Order shall be effective immediately and shall be applied to all allocations made after January 1, 1994, with respect to any Qualified Low-Income Housing Project. This Executive Order shall continue in effect until such time as it may be repealed or superseded by operation of the state or federal law.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise the Capital, the 4th day of December, in the year of our Lord nineteen hundred ninety-eight, and of the Independence of the United States of America the two hundred twenty-third, and of the Statehood of Idaho the one hundred ninth.

PHILIP E. BATT
GOVERNOR

PETE T. CENARRUSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE

EXECUTIVE ORDER NO. 98-13

DEPARTMENT OF LABOR AS THE LEAD AGENCY FOR THE ADMINISTRATION
OF THE WORKFORCE INVESTMENT ACT OF 1998, THE JOB TRAINING PARTNERSHIP ACT
AS AMENDED, AND THE WORKER READJUSTMENT AND RETRAINING NOTIFICATION ACT;
REPLACING EXECUTIVE ORDER 92-28

WHEREAS, the Congress of the United States passed the Workforce Investment Act of 1998 for the purpose of establishing a framework for a workforce preparation and employment system designed to meet the needs of the nation's businesses and the needs of job seekers and those who want to further their careers; and

WHEREAS, Title I of the Act, referred to as the Workforce Investment Systems, will replace the Job Training Partnership Act upon its expiration on July 1, 2000; and

WHEREAS, Executive Order No. 92-28 assigned the Department of Labor with the general responsibility for the administration of the Job Training Partnership Act and the Economic Dislocation and Worker Adjustment Assistance Act of 1988, as amended by the Job Training Reform Amendments Act of 1992, and the Worker Adjustment and Retraining Notification Act of 1988; and

WHEREAS these acts charge the Governor with substantial responsibility for implementing their provisions;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of this state, do hereby order the following:

Except for specific responsibilities that have been assigned to other state agencies, the Department of Labor shall continue to have general responsibility for statewide administration of the employment and training system under the Job Training Partnership Act and the Economic Dislocation and Worker Adjustment Assistance Act, as amended by the Job Training Reform Amendments of 1992 and the Worker Adjustment and Retraining Notification Act of 1988 until such time as the Acts expire; and

The Department of Labor shall be assigned general responsibility for the statewide implementation and administration of the Workforce Investment System under Title I of the Workforce Investment Act of 1998;

The designation of the Department of Labor as the signatory official for all grants and official documents required under Title I of the Act;

The Department of Labor shall continue in its role as the lead agency for deploying Rapid Response to dislocations experienced as a result of business closures or substantial layoffs;

The designation of the Department of Labor as the agency assigned responsibility for carrying out the responsibilities of the state in identifying and providing a list of eligible providers of training services.

This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at the Capitol, the 4th day of December, in the year of our Lord nineteen hundred ninety-eight, and of the Independence of the United States of America the two hundred twenty-third, and of the Statehood of Idaho the one hundred ninth.

PHILIP E. BATT
GOVERNOR

PETE T. CENARRUSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE

EXECUTIVE ORDER NO. 98-14

CONTINUATION OF THE DEPARTMENT OF LABOR AS THE RECIPIENT OF ALL FUNDS UNDER THE WAGNER-PEYSER ACT, AS AMENDED, BY THE WORKFORCE INVESTMENT ACT OF 1998 TO BE ALLOCATED TO IDAHO IN SUPPORT OF THE STATE PLAN, REPEALING AND REPLACING EXECUTIVE ORDER NO. 95-3

WHEREAS, the Workforce Investment Act of 1998, wherein the Wagner-Peyser Act was amended for the purpose of fostering a new partnership between the federal government, the states, and private sector employers and to provide maximum authority and flexibility to the states in responding to the labor market needs of their jurisdictions; and

WHEREAS, Executive Order No. 98-13 assigned to the Department of Labor the general responsibility for administration of the Workforce Investment Act of 1998; and

WHEREAS, that Act charges the Governor with substantial responsibilities for implementing its provisions;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, do hereby order the following:

1. The designation of the Department of Labor as the signatory official for all grants and official documents required under the Wagner-Peyser Act, as amended;
2. The designation of the Department of Labor as the recipient of all funds to be allocated to or negotiated with the Idaho in support of the state plans as required under Sections 7(a), 7(b), and 7(c) of the Act and as may be approved by the USDOL Employment and Training Administration;
3. Designation of the Department of Labor to enter into reimbursable agreements when appropriate for non-Wagner-Peyser authorized activities such as labor certification, migrant housing inspections, national labor market information, Disabled Veterans Outreach, and Local Veterans Employment Representatives.

This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at the Capitol, the 4th day of December, in the year of our Lord nineteen hundred ninety-eight, and of the Independence of the United States of America the two hundred twenty-third, and of the Statehood of Idaho the one hundred ninth.

PHILIP E. BATT
GOVERNOR

PETE T. CENARRUSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE

EXECUTIVE ORDER NO. 98-15

DEPARTMENT OF LABOR AS THE LEAD AGENCY FOR THE ADMINISTRATION OF THE
EMPLOYMENT STATISTICS PROVISIONS OF THE WORKFORCE INVESTMENT ACT OF 1998,
THE WAGNER-PEYSER ACT AS AMENDED,
AND REPEALING AND REPLACING EXECUTIVE ORDER 97-09

WHEREAS, the Congress of the United States passed the Workforce Investment Act of 1998, amending section 14 of the Wagner-Peyser Act, for the purpose of establishing the development, maintenance, and continuous improvement of a nationwide employment statistics system.

WHEREAS, Title I, Section 309 of the Act, referred to as the Workforce Investment Systems and amendments to the Wagner-Peyser Act, will take effect July 1, 1999; and

WHEREAS, the act mandates the Governor to designate a single State agency to be responsible for the management of the portions the employment statistics system described in the Act that comprise a statewide employment statistics system, for the State's participation in the development of the annual plan for that system, and to establish a process for the oversight of such system in the state; and

WHEREAS, Executive Order No. 97-09 designated the Idaho Department of Labor as the organizational unit responsible for the oversight and management of Idaho's statewide comprehensive labor market and occupational supply and demand information system and, further, directed the Idaho Department of Labor to rely upon the Idaho State Occupational Information Coordinating Committee for coordinating and disseminating state and local career information, and training and technical assistance to support comprehensive career guidance programs; and

WHEREAS the act charges the Governor with substantial responsibility for implementing its provisions;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of this state, do hereby order the following:

The Idaho Department of Labor shall continue to be the single State agency responsible for the management of the statewide employment statistics system, participation in the plan for a nationwide employment statistics system, and establishment of a process for the oversight of the statewide employment statistics system; and

The Idaho Department of Labor shall carry out the duties set forth in Section 309(e)(2) of the act;
and

The Idaho Department of Labor shall continue to rely upon the Idaho State Occupational Information Coordinating Committee, through the Idaho Career Information System, as a dissemination mechanism for user-friendly occupational, educational and related career information and for training and technical assistance.

This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at the Capitol, the 4th day of December, in the year of our Lord nineteen hundred ninety-eight, and of the Independence of the United States of America the two hundred twenty-third, and of the Statehood of Idaho the one hundred ninth.

PHILIP E. BATT
GOVERNOR

PETE T. CENARRUSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE

EXECUTIVE ORDER NO. 98-16

**DESIGNATION OF THE STATE ENTITY RESPONSIBLE FOR DEVELOPING AND DELIVERING
COMPREHENSIVE COMPUTER-BASED CAREER INFORMATION**

WHEREAS, Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998, P.L. 105-800 mandates that the Idaho Division of Vocational Education and the Governor of the State of Idaho shall jointly designate an entity in the State to:

Provide support for career guidance and academic counseling programs designed to promote improved career and educational decision making by individuals, especially in areas of career information delivery;

Make information and planning resources available to students, parents, teachers, and administrators that relates educational preparation to career goals;

Provide information to assist students and parents with career exploration, educational opportunities, and educational financing;

Improve coordination and communication to ensure nonduplication of efforts and shared information; and

Provide a means for customers to provide comments and feedback on products and services to better meet customer requirements; and

WHEREAS, the Idaho State Occupational Information Coordinating Committee has provided oversight and management of the Idaho Career Information System in delivering current and accurate occupational, educational and related career information to the residents of Idaho; and

WHEREAS, career information is critical in helping people make successful career decisions, understand the link between educational preparation and work, explore education and career alternatives, and successfully seek work;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this State of Idaho, do hereby designate the Idaho State Occupational Information Coordinating Committee consisting of representatives from the Idaho Division of Vocational Education, the Idaho Department of Commerce, Idaho Department of Labor, the Office of the State Board of Education, the Idaho Division of Vocational Rehabilitation, and the Workforce Development Council as the entity responsible for oversight and management of Idaho's comprehensive, computer-based system of career information known as the Idaho Career Information System.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 4th day of December in the year of our Lord nineteen hundred ninety-eight and of the Independence of the United States of America the two hundred twenty-third and of the Statehood of Idaho the one hundred ninth.

PHILIP E. BATT
GOVERNOR

PETE T. CENARRUSA
SECRETARY OF STATE

IDAPA 01 - IDAHO BOARD OF ACCOUNTANCY

01.01.01 - IDAHO ACCOUNTANCY RULES

DOCKET NO. 01-0101-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-204(1), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The proposed rules have been amended in response to public comment and to make a transcriptional correction to the rules, and are being amended pursuant to Section 67-5227, Idaho Code. A sentence has been relocated because its impact is on the entire rule section, not just the subsection to which it had previously been attached. The AICPA Quality Review Program references have been changed to AICPA Peer Review Program to reflect the organization's name change. A sentence referencing firm license has been removed, because Idaho Code speaks to firm registration rather than firm license. The phrase "which has been completed accurately and truthfully" has been added in reference to the filling of a practice unit registration form.

Only the sections that have changes are printed in this bulletin. The original text of the proposed rules was published in the Idaho Administrative Bulletin, October 7, 1998, Volume 98-10, pages 1 through 4.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Barbara R. Porter at 208-334-2490.

DATED this 29th day of October 1998.

Barbara R. Porter, Executive Director
Idaho State Board of Accountancy
1109 Main Street, Owyhee Plaza Suite 470
PO Box 83720
Boise, Idaho 83720-0002
Phone: 208-334-2490
Fax: 208-334-2615
E-mail: bporter@boa.state.id.us

**IDAPA 01
TITLE 01
Chapter 01**

IDAHO ACCOUNTANCY RULES

**There are substantive changes
from the proposed rule text.**

**Only those sections that have changed from the
original proposed text are printed in this
Bulletin following this notice.**

**The complete original text was published in the Idaho Administrative Bulletin,
Volume 98-10, October 7, 1998, pages 1 through 4.**

**This rule has been adopted as Final by the Agency
and is now pending review by the 1999
Idaho State Legislature for final adoption.**

THE FOLLOWING IS TEXT OF DOCKET NO. 01-0101-9801

608. ADMINISTERING ORGANIZATIONS (Rule 608).

This section shall not require any practice unit to become a member of any administering organization. Qualified administering organizations which register with and are approved by the board based on their adherence to the ~~Quality AICPA Peer~~ Review minimum standards, shall be the: (7-1-96)(____)

01. Monitoring Organizations. AICPA practice monitoring organizations such as the SEC Practice Section (SECPS). (7-1-96)

~~02. The Private Companies Practice Section (PCPS).~~ (7-1-96)

~~03. Quality Peer Review Program. Quality Peer review program of the American Institute of Certified Public Accountants (AICPA).~~ (7-1-96)(____)

~~04. State CPA Societies. State CPA societies fully involved in the administration of the AICPA Quality Peer Review Program and their successor organizations which meet the minimum standards.~~ (7-1-96)(____)

~~05. National Society of Public Accountants (NSPA).~~ (7-1-96)(____)

~~06. And Such Other Entities. This section shall not require any practice unit to become a member of any administering organization.~~ (7-1-96)(____)

(BREAK IN CONTINUITY OF SECTIONS)

619. PENALTY FOR FAILURE TO COMPLY (RULE 619).

A one-hundred dollar (\$100) penalty shall be assessed for each act of non-compliance with this subchapter. Examples of non-compliance include, but are not limited to the following: failure to timely submit a practice unit registration form which has been completed accurately and truthfully; failure to timely enroll with an approved administering organization; and failure to timely complete a quality review. The annual license of the principle(s) of a non-compliant practice unit will not be issued until and unless the practice unit complies with all requirements of this subchapter, provided the licensee has met all licensing requirements. (____)

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.02.14 - RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective at the conclusion of the regular or special legislative session at which the rule is submitted for review, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 77-111, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. The amendment extends the deadline for compliance with UR. 2.2 of Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices (incorporated by reference in IDAPA 02.02.14) from January 1, 1999, to January 1, 2002. UR. 2.2 requires that all vehicle metering systems be equipped with ticket printers for all sales where product is delivered through a meter. Compliance with the January 1, 1999, deadline in UR 2.2. would cause some economic hardship in the industry and some factions affected by the rule are requesting a complete exemption. The extension allows the Idaho State Department of Agriculture and industry to better evaluate the rule before it goes into effect.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, Volume 98-10, pages 6 and 7.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lane Jolliffe or Jim Boatman at (208) 332-8660.

DATED this 13th day of November, 1998.

Patrick A. Takasugi, Director
Idaho State Department of Agriculture
PO Box 790, Boise, ID 83701-0790
Phone: (208) 332-8500 / Fax: (208) 334-4623

**IDAPA 02
TITLE 02
Chapter 14**

RULES FOR WEIGHTS AND MEASURES

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 98-10, October 7, 1998, pages 6 and 7.**

**This rule has been adopted as Final by the Agency and is now pending review
by the 1999 Idaho State Legislature for final adoption.**

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE
02.03.03 - RULES GOVERNING PESTICIDE USE AND APPLICATION

DOCKET NO. 02-0303-9802

NOTICE OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective at the conclusion of the regular or special legislative session at which the rule is submitted for review, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-3421, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The amendments add the Livestock Protection Collar as a license category and allow United States Department of Agriculture Wildlife Services personnel to be licensed and to use the Livestock Protection Collar containing Compound 1080. The amendment also defines training and recordkeeping requirements.

The proposed rule has been amended pursuant to Section 67-5227, Idaho Code, to make transcriptional corrections to the rule as follows:

Subsection 101.02.b. – The word "livestock" has been changed to "sheep" as underlined in the following sentence: "In addition to wire livestock fences, and other man-made fences, such as rock walls, natural barriers such as escarpments, lakes, or large rivers may be used as fences, as long as they will prevent escape of sheep."

Subsection 101.02.f. – The following language has been added: "An inspection report on a form prescribed by the director shall be forwarded to ISDA following any inspection."

Subsection 101.02.k.i. – The term "twenty four (24) hours" has been changed to "seventy two (72) hours".

Subsection 101.02.k.iv. – The word "livestock" has been changed to "sheep".

Changes have been made to Subsections 101.02.i.iii. and 102.03 to make typographical corrections.

Only the section that contains transcriptional corrections is printed in this bulletin. The original text of the proposed rule was published in the October 7, 1998, Idaho Administrative Bulletin, Volume 98-10, pages 9 through 17.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Rod Awe at (208) 332-8615.

DATED this 18th day of November, 1998.

Mike Everett, Deputy Director
Idaho State Department of Agriculture
P.O. Box 790
Boise, Idaho 83701-0790
(208) 332-8500
(208) 334-4623

IDAPA 02
TITLE 03
Chapter 03

RULES GOVERNING PESTICIDE USE AND APPLICATION

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The complete original text was published in the Idaho Administrative Bulletin, Volume 98-10, October 7, 1998, pages 9 through 17.

This rule has been adopted as Final by the Agency and is now pending review by the 1999 Idaho State Legislature for final adoption.

All sections have some changes, therefore, the entire docket is being reprinted.

THE FOLLOWING IS TEXT OF DOCKET NO. 02-0303-9802

~~101.--149.~~ **(RESERVED) REGISTRATION AND LICENSING REQUIREMENTS FOR USE OF THE LPC.**

01. Registration. Use restricted to United States Department of Agriculture, Animal and Plant Health Inspection Service, wildlife services (USDA, APHIS, WS) employees, licensing, and recordkeeping requirements for the LPC. ()

a. Only the USDA, APHIS, WS shall register the LPC. USDA, APHIS, WS shall hereinafter be known as the registrant for the purpose of these rules. ()

b. The LPC shall be transferred only by the registrant and only to professional applicators who are certified in the LC category and who are current employees of USDA, APHIS, WS. ()

c. The LPC shall be used only by professional applicators with certification in the LC category who are current employees of the USDA, APHIS, WS. ()

d. Only the manufacturer is authorized to fill collars with Compound 1080. Certified professional applicators or any other person shall not fill collars or remove the pesticide from the collars. ()

e. Before obtaining certification and licensing, LC applicants shall receive training and demonstrate competency in the areas listed in Subsection 100.01.b.x. and 100.01.b.xi. of these rules and satisfy Section 22-3404, Idaho Code. ()

02. Use of the LPC (Compound 1080). ()

a. Use of collars shall conform to all applicable federal and state regulations. ()

b. Collars shall be used only upon sheep within fenced pastures no larger than two thousand five hundred sixty (2,560) acres (four (4) square miles). Fenced pastures include all pastures that are enclosed by livestock fencing. In addition to wire livestock fences, and other man-made fences, such as rock walls, natural barriers such as escarpments, lakes, or large rivers may be used as fences, as long as they will prevent escape of sheep. Fenced pastures and fences as herein defined shall be referred to elsewhere in this section as "area". Collars shall not be used on unfenced, open range. ()

c. Collars shall be used to take coyotes only. ()

d. LPCs shall be used only as a "last resort" measure. ()

e. Warning signs shall be posted at all usual points of entry to the area, including any access roads, or footpath or other walking route that enters the area. When there are no usual points of entry, signs shall be posted in the corners of the area or in any other location affording maximum visibility. ()

i. The signs shall remain visible and legible throughout the collar use. ()

ii. All warning signs shall be posted and inspected once a week by the certified Wildlife Services employee to ensure their continued presence and legibility, and will be removed when all collars are removed and accounted for. ()

iii. Warning signs shall be at least fourteen (14) inches by sixteen (16) inches with letters at least one (1) inch in height. ()

iv. All warning signs shall have a background color that contrasts with red. The words "DANGER" and "PELIGRO," plus "PESTICIDES" and "PESTICIDAS," shall be at the top of the sign, and the words "KEEP OUT" and "NO ENTRE" shall be at the bottom of the sign. Letters for all words shall be clearly legible. A circle containing an upraised hand on the left and a stern face on the right shall be near the center of the sign. The inside of the circle shall be red, except that the hand and a large portion of the face shall be in a shade that contrasts with red. The length of the hand shall be at least twice the height of the smallest letters. The length of the face shall be only slightly smaller than the hand. ()

v. The name of the pesticide (Compound 1080) and the date of use shall appear on the warning sign. ()

f. Each collar in use shall be inspected by the professional applicator once a week to ensure that it is properly positioned and unbroken. An inspection report on a form prescribed by the director shall be forwarded to ISDA following any inspection. ()

i. If any collared animal is not accounted for in any one (1) check, a complete and intensive search for the collared animal shall be conducted. ()

ii. If more than three (3) LPCs are unaccounted for during any fourteen (14) day period, WS employees shall remove all LPCs from all animals and terminate their use. Use of collars shall not be resumed until WS employees have provided ISDA with a written protocol defining adequate steps they shall take to prevent any losses of LPCs. ()

g. If a collar is found to have been punctured by a predator attacking a collared animal, a complete and intensive search shall be conducted for the predator that punctured the collar. ()

i. Disposal of punctured or unserviceable collars and contaminated gloves, clothing, vegetation, or soil shall be through the ISDA pesticide disposal program. Disposal of animal remains shall be in accordance with label directions. ()

h. Intact LPCs containing Compound 1080 shall be stored by USDA, APHIS, WS under lock and key in a dry place away from food, feed, domestic animals, and corrosive chemicals. Intact collars shall not be stored in any structure occupied by humans. ()

- i. Prior to any intended use or application of the LPCs, the professional applicator shall submit to ISDA a written notice of intended use, as prescribed by the ISDA. The notice shall contain the following: ()
- i. The professional applicator's license number issued by the ISDA; ()
- ii. A list of the names and addresses of the owners or persons in charge of the areas to be treated and a map of the geographic location of such areas; ()
- iii. The approximate size of the area where treatment will take place; ()
- iv. The intended period of use; and ()
- v. The number of collars to be used. ()
- j. USDA, APHIS, WS shall accurately keep and maintain the following records and reports: ()
 - i. Records of all collars distributed; ()
 - ii. The name and address of each professional applicator receiving the collars; and ()
 - iii. The dates and the number of collars received by each professional applicator. ()
 - iv. These records shall be maintained by USDA, APHIS, WS for a period of three (3) years and shall be made available to the ISDA for inspection, duplication, and verification upon request by the ISDA. ()
 - v. A report of this information shall be submitted to the ISDA and the US EPA upon each collar distribution. ()
- k. The professional applicator shall accurately keep and maintain the following records and reports: ()
 - i. Any suspected poisoning of humans, threatened or endangered species, domestic animals, or non-target wild animals shall be reported within seventy-two (72) hours or less to the ISDA and US EPA; ()
 - ii. The name and address of the person on whose property the LPC was used or, if different from the property owner, the same information for the person in charge of the area where the collars will be used; ()
 - iii. A map of the geographic location and size of the area in which the LPCs were used; ()
 - iv. A summary report of the date each individual collar was obtained by the professional applicator, placed on sheep, punctured or ruptured (along with apparent cause), lost or unrecovered, or removed and put in storage, or disposed of through the ISDA Pesticide Disposal Program; ()
 - v. The species, date, and location of each animal found poisoned or suspected of having been poisoned as a result of the use of Compound 1080 in LPCs; ()
 - vi. The dates and results of each collar inspection; and ()
 - vii. A written description of any complete and intensive search for missing collars or poisoned animals conducted as specified in these rules. ()
 - viii. The records required by this rule shall be maintained by the professional applicator for a period of three (3) years and shall be made available to the ISDA for inspection, duplication and verification upon request of the ISDA. ()
 - ix. A report of this information shall be submitted to the ISDA as specified in these rules. ()

**IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE
02.06.01 - RULES GOVERNING THE PURE SEED LAW**

DOCKET NO. 02-0601-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective at the conclusion of the regular or special legislative session at which the rule is submitted for review, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-434, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The amendment to the rule establishes a seed dealer's license fee structure for services rendered (conditioning, labeling, and selling seed). Under the fee structure, seed dealers pay only for the service or services they render.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, August 5, 1998, Volume 98-8, pages 9 and 10.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Richard C. Lawson, Bureau Chief, at (208) 332-9630 or Dr. Roger R. Vega, Administrator, at (208) 332-8620.

DATED this 13th day of November, 1998.

Patrick A. Takasugi, Director
Idaho State Department of Agriculture
PO Box 790
Boise, ID 83701-0790
(208) 332-8500 Fax: (208) 334-4623

**IDAPA 02
TITLE 06
Chapter 01**

RULES GOVERNING THE PURE SEED LAW

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 98-8, August 5, 1998, pages 9 and 10.**

**This rule has been adopted as Final by the Agency and is now pending
review by the 1999 Idaho State Legislature for final adoption.**

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING

DOCKET NO. 07-0104-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1006(5), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 7, 1998, Idaho Administrative Bulletin, Volume 98-10, pages 23 through 25.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Gary L. Malmen, Electrical Bureau Chief, Division of Building Safety, 277 N. 6th Street, Suite 101, P.O. Box 83720, Boise, Idaho 83720-0028, (208) 334-2183.

DATED this 30th day of October, 1998.

Connie J Mumm
Division of Building Safety
277 N. 6th Street, Suite 100
P.O. Box 83720
Boise, ID 83720-0048
(208) 334-3950/fax (208) 334-2683

IDAPA 07
TITLE 01
Chapter 04

RULES GOVERNING ELECTRICAL SPECIALTY LICENSING

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 98-10, October 7, 1998, pages 23 through 25.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.02.05 - RULES GOVERNING PLUMBING SAFETY LICENSING

DOCKET NO. 07-0205-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-2605, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 7, 1998, Idaho Administrative Bulletin, Volume 98-10, pages 26 through 29.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joe Meyer, Plumbing Bureau Chief, Division of Building Safety, 277 N. 6th Street, Suite 100, P.O. Box 83720, Boise, Idaho 83720-0068, (208) 334-3442.

DATED this 30th day of October, 1998.

Connie J Mumm
Division of Building Safety
277 N. 6th Street, Suite 100
P.O. Box 83720
Boise, ID 83720-0048
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IDAPA 07
TITLE 02
Chapter 05

RULES GOVERNING PLUMBING SAFETY LICENSING

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 98-10, October 7, 1998, pages 26 through 29.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.03.13 - RULES GOVERNING MOBILE HOME REHABILITATION

DOCKET NO. 07-0313-9802

NOTICE OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 44-2504, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 7, 1998, Idaho Administrative Bulletin, Volume 98-10, pages 32 through 36.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jack Rayne, Building Programs Manager, Division of Building Safety, 277 N. 6th Street, Suite 100, P.O. Box 83720, Boise, Idaho 83720-6001, (208) 334-3896.

DATED this 30th day of October, 1998.

Connie J Mumm
Division of Building Safety
277 N. 6th Street, Suite 100
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IDAPA 07
TITLE 03
Chapter 13

RULES GOVERNING MOBILE HOME REHABILITATION

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 98-10, October 7, 1998, pages 32 through 36.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.03.13 - RULES GOVERNING MOBILE HOME REHABILITATION

DOCKET NO. 07-0313-9803

NOTICE OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 44-2504, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 7, 1998, Idaho Administrative Bulletin, Volume 98-10, page 37.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jack Rayne, Building Programs Manager, Division of Building Safety, 277 N. 6th Street, Suite 100, P.O. Box 83720, Boise, Idaho 83720-6001, (208) 334-3896.

DATED this 30th day of October, 1998.

Connie J Mumm
Division of Building Safety
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IDAPA 07
TITLE 03
Chapter 13

RULES GOVERNING MOBILE HOME REHABILITATION

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 98-10, October 1, 1998, page 37.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 08 - DEPARTMENT OF EDUCATION
08.02.02 - RULES GOVERNING UNIFORMITY
DOCKET NO. 08-0202-9802
NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 33-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Adopt specific teacher endorsements/certification criteria for teaching in several subject areas.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, September 2, 1998, Volume 98-9, pages 9 through 13.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Donald C. Robertson, Deputy Attorney General for the Department of Education at (208) 332-6812.

DATED this 13th day of November, 1998,

Donald C. Robertson
Deputy Attorney General
Department of Education
650 West State, Room 200
PO Box 83720
Boise, ID 83720-0027
Phone: (208) 332-6812
Fax: (208) 334-2228

IDAPA 08
TITLE 02
Chapter 02

RULES GOVERNING UNIFORMITY

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 98-9, September 2, 1998,
pages 9 through 13.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 12 - DEPARTMENT OF FINANCE
12.01.08 - RULES PURSUANT TO THE IDAHO SECURITIES ACT

DOCKET NO. 12-0108-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule became final and effective November 1, 1998, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 30-1448, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

This rule-making adopts certain uniform guidelines used by most states in reviewing certain securities offerings.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, October 7, 1998, Volume 98-10, pages 40 through 45.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Marilyn T. Scanlan, Bureau Chief, (208) 332-8070.

DATED this 17th day of November, 1998.

Marilyn T. Scanlan
Bureau Chief
Department of Finance
Securities Bureau
700 W. State, 2nd Floor
P. O. Box 83720
Boise, Idaho 83720-0031
Phone: (208) 332-8070
Fax: (208) 332-8099

IDAPA 12
TITLE 01
Chapter 08

RULES PURSUANT TO THE IDAHO SECURITIES ACT

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 98-10, October 7, 1998,
pages 40 through 45.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 12 - DEPARTMENT OF FINANCE

12.01.10 - RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

DOCKET NO. 12-0110-9801

NOTICE OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendments to the temporary rule is November 1, 1998. These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule became final and effective November 1, 1998, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 26-3105(5), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the existing temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The amendments streamline and clarify the original rules, delete certain proposed requirements which may have been unduly burdensome in relation to the potential benefits, and are more consistent with existing federal law requirements.

The proposed rules have been amended in response to public comment and to make typographical, transcriptional, and clerical corrections to the rules, and are being amended pursuant to Section 67-5227, Idaho Code. Rather than keep the temporary rules in place while the pending rules await legislation approval, the Department amended the temporary rules with the same revisions which have been made to the proposed rules.

Only the sections that have changes are printed in this bulletin. The original text of the proposed rules was published in the Idaho Administrative Bulletin, October 7, 1998, Volume 98-10, pages 46 through 54.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Marilyn T. Scanlan, Bureau Chief, (208) 332-8070.

DATED this 17th day of November, 1998.

Marilyn T. Scanlan
Bureau Chief
Department of Finance
Securities Bureau
700 W. State Street, 2nd Floor
P. O. Box 83720
Boise, Idaho 83720-0031
Phone (208) 332-8070
Fax (208) 332-8099

IDAPA 12
TITLE 01
Chapter 10

RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The complete original text was published in the Idaho Administrative Bulletin, Volume 98-10, October 7, 1998, pages 46 through 54.

This rule has been adopted as Final by the Agency and is now pending review by the 1999 Idaho State Legislature for final adoption.

THE FOLLOWING IS TEXT OF DOCKET NO. 12-0110-9801

002. WRITTEN INTERPRETATIONS-AGENCY ACCESS-FILINGS (Rule 2).

Written interpretations of these rules are available by mail from the Department of Finance, P.O. Box 83720, Boise, Idaho 83720-0031. The street address of the agency is Department of Finance, Joe R. Williams Building, 700 West State Street, Boise, Idaho, 83720-0031. The telephone numbers of the agency include (208) 332-8000 - Administration; and (208) 332-8004 - Residential Mortgage. The telephone number of the facsimile machine is (208) 332-8099. All filings with the agency in connection with rule-making or contested cases shall be made with the Director of the Department of Finance, and shall include an original and one (1) copy. ~~(11-1-98)T~~(11-1-98)T

(BREAK IN CONTINUITY OF SECTIONS)

005. INCORPORATION BY REFERENCE (Rule 5).

IDAPA 12.01.10, "Rules Pursuant to the Idaho Residential Mortgage Practices Act," incorporates by reference the full text of the following federal laws and regulations: the Real Estate Settlement Procedures Act, as amended, 12 USCA 2601, et seq., 88 Stat. 1724, Pub. L. 93-533; Department of Housing and Urban Development's Regulation X, Real Estate Settlement Procedures Act, 24 CFR 3500, as amended; Regulation Z, Truth in Lending, 12 CFR 226, as amended; and, the Truth in Lending Act, as amended, 15 USCA 1601, et seq., 82 Stat. 146, Pub. L. 90-321.

(11-1-98)T

006. DEFINITIONS (Rule 6).

As used in these rules:

01. Closing. Means the process of executing legally binding documents regarding a lien on property that is subject to a residential mortgage loan. (11-1-98)T

02. Real Estate Settlement Procedures Act. Means the Real Estate Settlement Procedure Act, as amended, 12 USCA 2601, et seq., 88 Stat. 1724, Pub. L. 93-533. (11-1-98)T

03. Regulation X. Means the Department of Housing and Urban Development's Regulation X, Real Estate Settlement Procedure Act, 24 CFR 3500, as amended. (11-1-98)T

04. Regulation Z. Means Regulation Z, Truth in Lending, 12 CFR 226, as amended. (11-1-98)T

05. Truth in Lending Act. Means the Truth in Lending Act, as amended, 15 USCA 1601, et seq., 82 Stat. 146, Pub. L. 90-321. (11-1-98)T

0057. -- 009. (RESERVED).

010. TRUST ACCOUNT (Rule 10).

01. Establishment of Trust Account ~~for Borrower Funds to Pay Third-Party Providers.~~ Each licensee shall, as trustee, hold all borrower funds received prior to closing on behalf of borrowers for payment to third party providers in a trust account established at a financial institution located in this state. The funds may not be used for the benefit of the licensee or any person not entitled to such benefit. ~~Each licensee shall establish a trust account(s) for the funds in a financial institution's branch located in this state.~~ Each licensee is responsible for depositing, holding, disbursing, accounting for, and otherwise dealing with the funds, in accordance with these rules.

(11-1-98)T(11-1-98)T

02. Designation of Trust Account(s). Each account holding borrower funds ~~to pay third party providers~~ must be designated as a trust account in the name of the licensee as it appears on its license. All checks must be prenumbered by the supplier (printer) and bear upon the front of the check the identifying words, "trust account".

(11-1-98)T(11-1-98)T

03. Required Trust Account Records and Procedures. ~~Unless alternative records or procedures for use by the licensee are approved in advance by the director, e~~Each licensee shall maintain as part of its books and records:

(11-1-98)T(11-1-98)T

a. A trust account deposit register ~~and copies of all validated~~ that includes a copy of each check deposited into the trust account and the corresponding deposit slips or signed deposit receipts for each deposit to the trust account;

(11-1-98)T(11-1-98)T

b. A ledger for ~~each~~ the trust account. Licensees may maintain either one (1) ledger for the entire trust account or an individual subaccount ledger sheet for each borrower. ~~Each~~ A trust account ledger must contain a separate subaccount ledger sheet for identify each borrower from whom funds deposited to the trust account are received for payment of third party providers. Each receipt and disbursement pertaining to such funds must be posted to the ledger sheet at the time the receipt or disbursement occurs. Entries to ~~each~~ the ledger sheet must show the date of deposit, identifying check or instrument number, amount and name of remitter. Offsetting entries to ~~each~~ the ledger sheet must show the date of check, check number, amount of check, name of payee and invoice number if any;. ~~Canceled or closed ledger sheets must be identified by time period and borrower name or loan number;~~

(11-1-98)T(11-1-98)T

c. A trust account check register ~~consisting of a record of all deposits to and disbursement from that~~ includes either a copy of each check written on the trust account or the canceled checks provided by the licensee's financial institution; and

(11-1-98)T(11-1-98)T

d. ~~Reconciled~~ Trust account bank statements; (11-1-98)T(11-1-98)T

e. A monthly trial balance of the ledger of trust accounts, and a reconciliation of the ledger of trust accounts with the related bank statement(s) and the related check register(s). The reconciled balance of the trust account(s) must at all times equal the sum of: (11-1-98)T

i. ~~The outstanding amount of funds received from borrowers for payment of third party providers; and-~~ (11-1-98)T

- ~~ii. The outstanding amount of any deposits into the trust account of the licensee's own funds. (11-1-98)T~~
- ~~f. A printed and dated source document file to support any changes to existing accounting records. (11-1-98)T~~
- 04. Trust Account Deposit Requirements. (11-1-98)T
 - a. All funds received from borrowers or on behalf of borrowers ~~for the payment of third party providers, whether specifically identified as such or not, and regardless of when they are received, prior to closing~~ must be deposited in the trust account(s) prior to the end of the ~~next third~~ business day following receipt. ~~In order to satisfy this requirement in regard to the deposit of a check or money order, the licensee must within one business day after receipt of the check or money order;~~ (11-1-98)T
 - ~~i. Endorse the Each check or money order shall be endorsed "for deposit only" with the licensee's trust account number, and mail the check postage prepaid to its financial institution; or (11-1-98)T(11-1-98)T~~
 - ii. Endorse the check or money order "for deposit only" with the licensee's trust account deposit number and mail the check or money order postage prepaid to the main office of the licensee. The main office shall, in turn, deposit the check or money order in its financial institution prior to the end of the next business day after receipt of the check or money order in the main office; or (11-1-98)T
 - ~~iii. Deposit the check or money order into its trust account by depositing it directly at the branch where its trust account is held or at an ATM of its financial institution. (11-1-98)T~~
 - b. All deposits to the trust account(s) must be documented by a bank deposit slip which has been validated by bank imprint, or by an attached deposit receipt which bears the signature of an authorized representative of the licensee indicating that the funds were actually deposited into the proper account(s). (11-1-98)T
 - c. Receipt of funds by wire transfer or any means other than cash, check or money order, must be posted in the same manner as other receipts. Any such transfer of funds must include a traceable identifying name or number supplied by the financial institution or transferring entity. The licensee must also retain a receipt for the deposit of the funds which must contain the traceable identifying name or number supplied by the financial institution or transferring entity. (11-1-98)T
 - ~~d. Deposits to the trust account(s) must be limited to funds delivered to the licensee for payment to third party providers, except a licensee may deposit its own funds into the trust account(s) to prevent a disbursement in excess of an individual borrower's subaccount, provided that the exact sum of deficiency is deposited and detailed records of the deposit and its purpose are maintained in the trust ledger and the trust account(s) check register. Any deposits of the licensee's own funds into the trust account(s) must be held in trust in the same manner as funds paid by borrowers for the payment of third party providers and treated accordingly. (11-1-98)T~~
 - ~~e. If a licensee has deposited its own funds into its trust account, the licensee may receive reimbursement for such deposit at closing into its general business bank account provided: (11-1-98)T~~
 - ~~i. All third party provider's charges associated with the licensee's deposit have been paid; (11-1-98)T~~
 - ~~ii. The HUD-1 Settlement Statement provided to the borrower clearly reflects the line item, "deposit paid by broker," and the amount deposited; (11-1-98)T~~
 - ~~iii. The HUD-1 Settlement Statement provided to the borrower clearly reflects the line item, "reimbursement to broker for funds advanced," and the amount reimbursed; and (11-1-98)T~~
 - ~~iv. Any funds disbursed by escrow at closing to the licensee for payment of unpaid third party providers' expenses charged to the licensee are deposited into the borrower's subaccount of the licensee's trust account. (11-1-98)T~~

05. Trust Account Disbursement Requirements. (11-1-98)T
- a. Each licensee is responsible for the disbursement of all trust account funds, whether disbursed by personal signature, signature plate, or signature of another person authorized to act on the licensee's behalf. (11-1-98)T
- b. All disbursements of trust funds must be made by check, drawn on the trust account, and identified on the check as pertaining to a specific third-party provider transaction or borrower refund, ~~except as specified in this section.~~ The number of each check, amount, date, and payee must be shown in the trust account(s) check ledger as written on the check. ~~(11-1-98)T~~(11-1-98)T
- c. Disbursements may be made from the trust account(s) for the payment of bona fide third-party providers' services rendered in the course of the borrower's loan origination, if the borrower has consented in writing to the payment. Such consent may be given at any time during the application process and in any written form, provided that it contains sufficient detail to verify the borrower's consent to the use of trust funds. ~~No disbursement on behalf of the borrower may be made from the trust account until the borrower's or licensee's deposit of sufficient funds into the trust account(s) is available for withdrawal.~~ (11-1-98)T(11-1-98)T
- d. ~~If a borrower has more than one (1) loan application pending with a licensee, the licensee shall maintain a separate subaccount ledger for each loan application. The borrower must consent to any transfer of trust account funds between the individual subaccounts associated with these pending loan applications. The consent must be maintained in the borrower's loan file and reference in the borrower's subaccount ledger sheets.~~ (11-1-98)T
- e. ~~Among other prohibited disbursements, no disbursement may be made from a borrower's subaccount:—~~ (11-1-98)T
- i. ~~In excess of the amount held in the borrower's subaccount (commonly referred to as a disbursement in excess);—~~ (11-1-98)T
- ii. ~~In payment of a fee owed to an employee of the licensee or in payment of an expense of the licensee;—~~ (11-1-98)T
- iii. ~~For payment of any service charges related to the management or administration of the trust account(s);—~~ (11-1-98)T
- iv. ~~For payment of any fees owed to the licensee by the borrower, or to transfer funds from the subaccount to any other account.~~ (11-1-98)T
- f. ~~A licensee may, in the case of a closed and funded transaction, transfer excess funds remaining in the individual borrower's subaccount into the licensee's general business bank account upon determination that all third-party providers' expenses have been accurately reported in the loan closing documents and have been paid in full and that the borrower has received credit in the loan closing document for all funds deposited in the trust account. Each licensee shall maintain a detailed audit trail for any disbursements from the borrower's subaccount(s) into the licensee's general business bank account, including documentation in the form of a final HUD-1 Settlement Statement form showing the credit has been received by the borrower in the closing and funding of the transaction. The disbursements must be made by a check drawn on the trust account and deposited directly into the licensee's general business bank account.~~ (11-1-98)T
- gd. There shall be no erasures or white-out corrections in any of the trust account records (checks, deposits, ledgers, subledgers, bank statements or reconcilements). All corrections shall be done by drawing a single line through the erroneous entry, leaving it legible, and making an entirely new entry to replace it. (11-1-98)T
- hg. Borrower funds held by the licensee must be remitted to the borrower within ~~five~~ thirty (530) business days of the determination that all payments to third-party providers owed by the borrower have been satisfied. ~~(11-1-98)T~~(11-1-98)T

~~if.~~ Any trust funds held by the licensee for a borrower who cannot be located must be remitted in compliance with Section 14-506, Idaho Code. (11-1-98)T

06. Computerized Accounting System Requirements. The following additional requirements apply to computerized accounting systems: (11-1-98)T(11-1-98)T

a. The system must provide the capability to back-up data files; and (11-1-98)T(11-1-98)T

~~b. Each computer generated trust account deposit register, trust account check register, and each trial balance ledger must be printed at least once per month and retained as part of a licensee's books and records. Each borrower subaccount ledger must also be printed at the closure of each subaccount and retained as part of a licensee's books and records; and~~ (11-1-98)T

~~e. Computer generated reconciliation of the trust account must be performed and printed at least once each month and retained as a part of the licensee's books and records.~~ (11-1-98)T

~~07. Automated Check Writing Systems. If a licensee uses a program which has the ability to write checks:—~~ (11-1-98)T

~~a. The check number must be pre-printed by the supplier (printer) on the check and on the voucher copy;—~~ (11-1-98)T

~~b. The program may assign suffixes or subaccount codes before or after the check number for identification purposes;—~~ (11-1-98)T

~~e. The check number must appear in the magnetic coding which also identifies the account number for readability by financial institution computers; and~~ (11-1-98)T

~~dh.~~ All checks written must be included within the computer accounting system. (11-1-98)T

~~011. -- 029. (RESERVED).~~

~~030. CONVERSATION LOG -- 3 (Rule 30).~~

~~Each licensee shall maintain a log of all contacts and conversations related to each applicant's residential mortgage loan transaction in each applicant's file that is retained with the file until final destruction. (Sections 26-3111, and 26-3112, Idaho Code.)~~ (11-1-98)T

~~031. -- 039. (RESERVED).~~

040. DECEPTIVE ADVERTISING (Rule 40).

01. Advertising. Advertising means making or permitting to be made any oral, written, graphic or pictorial statements, in any manner, in the course of the solicitation of business. Deceptive advertising is defined to include the following practices by a licensee: (11-1-98)T

a. Making a representation or statement of fact in an advertisement if the representation or statement is false or misleading, or if the licensee does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based. (11-1-98)T

b. Advertising without clearly and conspicuously disclosing the licensee's business name. (11-1-98)T

c. Engaging in bait advertising or misrepresenting, directly or indirectly the terms, conditions or ~~and~~ charges incident to the mortgage loan being advertised. Bait advertising, for these purposes, means an alluring, but insincere offer to procure, arrange, or otherwise assist a borrower in obtaining a mortgage loan on terms which the ~~broker/banker licensee~~ cannot, does not intend, or want to provide, or which the ~~broker/banker licensee~~ knows cannot be reasonably provided. Its purpose is to switch borrowers from buying the advertised mortgage loan product to buying a different mortgage loan product, usually at a higher rate or on a basis more advantageous to the ~~broker/~~

banker or lender licensee.

~~(11-1-98)T(11-1-98)T~~

d. ~~The advertisement of "pre-approval," "immediate approval" of a loan application, or "immediate closing" of a loan, or words of similar import, such as "instant closing," without simultaneously disclosing the terms upon which such approval is based.~~ ~~(11-1-98)T~~

e. ~~The advertisement of a "no point" mortgage loan when points are required or accepted by lender as a condition for commitment or closing.~~ ~~(11-1-98)T~~

f. ~~The advertisement of an incorrect specific number of points required for commitment or closing.~~ ~~(11-1-98)T~~

g. ~~The advertisement through such terms as "bad credit no problem" or "bankruptcy OK" or words of similar import or that an applicant will have unqualified access to credit without clearly and conspicuously disclosing the material limitations on the availability of credit that may exist, such as:~~ ~~(11-1-98)T~~

i. ~~Requirements for the availability of credit (such as income, credit rating, home equity);~~ ~~(11-1-98)T~~

ii. ~~That a higher interest rate or more points may be required for a customer with poor credit or marginal equity;~~ ~~(11-1-98)T~~

iii. ~~That restrictions as to the maximum principal amount of the loan offered may apply;~~ ~~(11-1-98)T~~

iv. ~~That an appraisal may be required; and~~ ~~(11-1-98)T~~

v. ~~That there will be "no up front costs" or words of similar import without clearly and conspicuously describing the events that will lead to fees and costs.~~ ~~(11-1-98)T~~

h. ~~The use of "avoid foreclosure" or words of similar import in an advertisement unless the advertisement also clearly and conspicuously discloses that:~~ ~~(11-1-98)T~~

i. ~~The borrower must use loan funds to redeem or refinance the mortgage currently in foreclosure and take out a new mortgage loan; and~~ ~~(11-1-98)T~~

ii. ~~The borrower may be required to pay interest rates significantly higher than what other borrowers not facing foreclosure might pay.~~ ~~(11-1-98)T~~

~~02d.~~ Advertising an address at which the licensee conducts no mortgage brokering or banking activities. ~~(11-1-98)T~~

(BREAK IN CONTINUITY OF SECTIONS)

050. WRITTEN DISCLOSURES-~~GOOD FAITH ESTIMATE AND TRUTH IN LENDING-~~DISCLOSURE (RULE 50).

~~01. Contract Between a Licensee and a Borrower. Every contract between a licensee and a borrower shall be in writing and shall contain the entire agreement of the parties.~~ ~~(11-1-98)T~~

~~021. Upon Receipt of a Loan Application. Upon receipt of a loan application, and before receipt of any moneys from an applicant borrower, a licensee shall disclose to each applicant borrower, in a form acceptable to the Director, information about the licensee, the services that a licensee may provide and the services that the licensee will provide. The licensee shall disclose in writing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specify the fee or fees which will inure to the benefit of the licensee, and such other disclosures as may be required by rule. A good faith~~

~~estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not determinable. The terms shall be disclosed in accordance with the requirements of the Federal Truth-in-Lending Act and its promulgated regulations. The disclosure shall inform the borrower that a mortgage will be placed on the home, that the mortgage may be foreclosed in case of nonpayment or delinquency and that the borrower has the legal right to rescind the transaction, except in the case of a purchase transaction.~~ (11-1-98)T(11-1-98)T

~~032. Written Disclosure. The written disclosure shall contain the following information: Information Provided Within Three Days. Within three (3) business days after application, the following information shall be provided to the borrower:~~ (11-1-98)T(11-1-98)T

~~a. Disclosures in compliance with the requirements of the federal Truth-in-Lending Act and Regulation Z. These include ~~the~~ the annual percentage rate, finance charge, amount to be financed, total of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate loan, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase on the monthly payment amount and total interest to be paid, and an example of the payment terms resulting from an increase for a loan in the approximate amount of the loan that is being requested. ~~Disclosure under this subsection shall be in print no smaller than twelve (12) point courier or ten (10) pitch. Disclosure in compliance with the requirements of the Federal Truth in Lending Act and Regulation Z shall be deemed to comply with the disclosure requirements of the rule.~~ (11-1-98)T(11-1-98)T~~

~~b. Disclosures through good faith estimates of settlement services in compliance with the requirements of the federal Real Estate Settlement Procedures Act and Regulation X. These disclosures include ~~the~~ the itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, premium pricing, escrow fee, loan closing fee, property tax, insurance premium, structural or pest inspection and any other third party provider's costs mortgage broker or mortgage banker fees associated with the residential mortgage loan. ~~Disclosure through good faith estimates of settlement services in compliance with the requirements of the Federal Real Estate Settlement Procedures Act and Regulation X shall be deemed to comply with the disclosure requirements of this rule.~~ (11-1-98)T(11-1-98)T~~

~~e03. Interest Rate Lock-in Agreement Not Entered. If applicable, at the time of application, the cost, terms, duration and conditions of a lock-in agreement, and whether a lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker, banker or lender. If an interest rate lock-in agreement has not been entered, disclosure must be made to the applicant borrower, in a form approved by the Director, that the disclosed interest rate and terms are subject to change. Such disclosure shall be provided to the borrower at the same time the Federal Truth-in-Lending disclosure is delivered. (11-1-98)T(11-1-98)T~~

~~d. A statement disclosing that money paid by the applicant to the licensee for third party provider services are held in a trust account and any money remaining after payment to third party providers will be refunded to the applicant. (11-1-98)T~~

~~04. Licensee Enters Into a Lock-in Agreement. If a licensee enters into an interest rate lock-in agreement with a lender or represents to the borrower that the licensee has entered into a lock-in agreement, then within no more than three (3) business days thereafter, including Saturdays, the licensee shall deliver or send by first-class mail to the borrower, for the borrower's signature, a written confirmation of the term of the lock-in agreement. (11-1-98)T(11-1-98)T~~

~~05. Licensee Shall Not Charge Any Fee That Inures to the Benefit of the Licensee. A licensee shall not charge any fee that inures to the benefit of the licensee if it exceeds the fee disclosed on the written disclosures pursuant to this rule unless;~~ (11-1-98)T

~~a. The need to charge the excess fee was not reasonably foreseeable at the time the written disclosure was provided, and;~~ (11-1-98)T

~~b. The licensee has provided to the borrower no less than three (3) business days prior to the signing of the loan closing documents, a clear, written explanation of the need for charging a fee exceeding that which was previously disclosed. However, if the borrower's closing costs, excluding prepaid escrowed costs of ownership as~~

~~defined by rule, does not exceed the total closing costs in the most recent good faith estimate, no other disclosures shall be required.~~ (11-1-98)T

05. In Addition to Disclosures Required. In addition to the disclosures required under the federal Truth-in-Lending Act, if a prepayment penalty may be a condition of the residential mortgage loan offered to a borrower, that fact shall be separately disclosed in writing to the borrower and the borrower must agree in writing to accept that condition. The disclosure shall state that a prepayment penalty provision imposes a charge if the borrower refinances or pays off the mortgage loan before the date for repayment stated in the loan agreement. This written disclosure shall be in a form approved by the Director, and shall be delivered at the same time the borrower is given the federal Truth-in-Lending disclosure. (11-1-98)T

06. Prepaid Escrowed Costs. Prepaid escrowed costs of ownership include money collected, as a part of the regular mortgage payments, that are impounded by mortgage holders to pay real estate taxes, insurance premiums and mortgage insurance premiums when they become due. The unearned portions of these funds are the property of the owner of the residence, and are an additional cost to the purchaser that shall be considered in the closing of the mortgage loan. (11-1-98)T

(BREAK IN CONTINUITY OF SECTIONS)

060. PROHIBITED PRACTICES (Rule 60).

01. Prohibited Practices. It shall be a prohibited practice for any licensee to: (11-1-98)T

a. Make any representation or statement of fact, or omit to state a material fact, if the representation, statement or omission is false or misleading or has the tendency or capacity to be misleading, or if the licensee or lender does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based. Such claims or omissions include but are not limited to the availability of funds, terms, conditions, or changes incident to the mortgage transaction, prepayment penalties and the possibility of refinancing. ~~In addition, other such claims, representations and omissions by the licensee include the amount of the brokerage fee, the services which will be provided or performed for the brokerage fee, the borrower's right to cancel any agreement with the licensee, and the identity of the mortgage lender that will provide the mortgage loan or commitment.~~ (11-1-98)T(11-1-98)T

b. ~~Accept an application from anyone other than a borrower, an employee or a bonded contract employee. This provision shall not prevent a person from referring consumers to a licensed mortgage broker or mortgage banker, provided that the person shall not accept a fee from the borrower or the licensee.~~ (11-1-98)T

eb. Fail to disburse funds in a timely manner, in accordance with any commitment or agreement with the borrower, either directly or through a broker: (11-1-98)T

i. Either immediately upon closing of the loan in the case of a purchase/sale transaction; or (11-1-98)T

ii. Immediately upon expiration of the three (3) day rescission period in the case of a refinancing, or taking of a junior mortgage on the existing residence of the borrower. (11-1-98)T

d. ~~Order or prepare closing documents for a mortgage loan until a lender has issued a firm commitment to make the loan on the same terms that have been disclosed to the borrower. A firm commitment is one which is not conditioned upon the underwriter's review of the credit report, employment information, title report, appraisal, or a review appraisal, if one is required by the lender.~~ (11-1-98)T

eg. Fail to give the borrower, upon the borrower's request, a reasonable opportunity (at least one (1) day) to review every document to be signed by the borrower, and every document which is required pursuant to these regulations, and other applicable laws, rules or regulations, prior to ~~disbursement of the mortgage funds~~ closing.

~~(11-1-98)T(11-1-98)T~~

~~f.d. Require a borrower to obtain or maintain fire insurance in an amount that exceeds the appraised replacement value of the improvements to the real estate. (11-1-98)T(11-1-98)T~~

~~g. Fail to take reasonable steps to communicate the material facts of the transaction in a language that is understood by the borrower. Reasonable steps which shall comply with this rule include, but are not limited to: (11-1-98)T~~

~~i. Use of adult interpreters; or (11-1-98)T~~

~~ii. Providing the borrower with a translated copy of the disclosure forms described in Section 050 (Rule 50) in a language that is understood by the borrower. (11-1-98)T~~

~~h. Fail to disclose to the borrower upon receiving a firm commitment for a loan, any information contained in the commitment which differs from the most recent good faith estimate provided to the applicant. (11-1-98)T~~

~~ie. Engage in any deceptive advertising as set forth in Section 040 (Rule 40). (11-1-98)T~~

~~02. Application for a Mortgage Loan From a Prospective Borrower. It shall be a violation of Section 26-3104, Idaho Code, for a person to accept an application for a mortgage loan from a prospective borrower unless the person is a licensee, an employee of a licensee or a bonded contract employee of a licensee. (11-1-98)T~~

~~03. Prepayment Penalty. If a prepayment penalty can be assessed, that fact shall be disclosed in writing and verbally as one (1) of the terms the borrower must affirmatively agree to accept. The conditions that will cause the penalty to be assessed shall be disclosed and discussed, and the amount of the penalty shall be disclosed and discussed in detail. Written disclosures shall be in type size twelve (12) point courier or ten (10) pitch. (11-1-98)T~~

(BREAK IN CONTINUITY OF SECTIONS)

070. FINANCIAL CONDITION (Rule 70).

Each licensee shall submit with the license application, and subsequent requests for renewals, a complete financial statement as of the most recent fiscal year end or fiscal quarter, that is prepared in accordance with Generally Accepted Accounting Principals (GAAP) and has been, at a minimum reviewed by a Certified Public Accountant. The licensee shall submit a financial statement in one (1) of the following forms: ~~(11-1-98)T(11-1-98)T~~

01. CPA Statement. Compiled, reviewed, or audited by a certified public accountant; (11-1-98)T

02. IRS Schedule L. Internal Revenue Service Schedule L for the most recent tax year and either the accompanying tax return or a certification signed by the licensee that the Schedule L is a true and correct copy of the Schedule L submitted to the Internal Revenue Service; or (11-1-98)T

03. Other Approved Form. Any other form approved by the Director. (11-1-98)T

(BREAK IN CONTINUITY OF SECTIONS)

090. BORROWERS UNABLE TO OBTAIN LOANS (Rule 90).

If, for any reason, a licensee is unable to obtain a loan for an ~~applicant borrower~~, and the ~~applicant borrower~~ has paid for ~~any third party services including a credit report or an appraisal~~, the licensee shall give a copy of the ~~credit report or appraisal~~ to the borrower and transmit the originals, along with any other documents provided by the ~~applicant borrower~~, to any other licensee to whom the ~~applicant borrower~~ directs that the documents be transmitted. The

licensee must provide the copies or transmit the documents within three business days after the ~~applicant~~ borrower makes the request in writing. ~~(11-1-98)T~~(11-1-98)T

(BREAK IN CONTINUITY OF SECTIONS)

100. EXEMPT ENTITIES (Rule 100).

The terms "bank," "savings and loan association" and "credit union" shall include any first tier wholly owned subsidiary of such organization, industrial loan company or wholly owned subsidiary of an industrial loan company, provided that the subsidiary is regularly examined by the chartering state or federal agency for consumer compliance purposes. ~~(11-1-98)T~~(11-1-98)T

IDAPA 13 - IDAHO FISH AND GAME COMMISSION
13.01.03 - PUBLIC USE OF THE LANDS OWNED OR CONTROLLED
BY THE DEPARTMENT OF FISH AND GAME

DOCKET NO. 13-0103-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, and Section 36-104(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

To clarify length of stay restriction and regional supervisor authority.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, July 1, 1998, Volume 98-7, pages 68 through 70.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Tom Parker at (208) 334-2920.

DATED this 18th day of November 1998.

W. Dallas Burkhalter, Deputy Attorney General
PO Box 25, Boise, ID 83707
208-334-3715/FAX 208-334-2148

IDAPA 13
TITLE 01
Chapter 03

PUBLIC USE OF THE LANDS OWNED OR CONTROLLED
BY THE DEPARTMENT OF FISH AND GAME

There are no substantive changes
from the proposed rule text.

The original text was published in the Idaho
Administrative Bulletin, Volume 98-7, July 1, 1998,
pages 68 through 70.

This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, and Section 36-104(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Implement elk zones and Clearwater deer tags. Improve customer service by simplifying issuance of outfitter set-aside tags returned to the department.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, January 7, 1998, Volume 98-1, pages 51 through 53.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Tom Parker at (208) 334-2920.

DATED this 18th day of November 1998.

W. Dallas Burkhalter
Deputy Attorney General
PO Box 25, Boise, ID 83707
208-334-3715/FAX 208-334-2148

**IDAPA 13
TITLE 01
Chapter 04**

RULES GOVERNING LICENSING

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho Administrative Bulletin,
Volume 98-1, January 7, 1998, pages 51 through 53.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-9803

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, and Section 36-104(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Set landowner preference seasons and permit levels for 1998.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, May 6, 1998, Volume 98-5, pages 34 through 42.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact John Beecham at 208-334-2920.

DATED this 18th day of November 1998.

W. Dallas Burkhalter
Deputy Attorney General
PO Box 25, Boise, ID 83707
208-334-3715/FAX 208-334-2148

**IDAPA 13
TITLE 01
Chapter 04**

RULES GOVERNING LICENSING

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 98-5, May 6, 1998,
pages 34 through 42.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-9804

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, and Section 36-104(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Recent changes to big game seasons triggered the outfitter allocation rule and require consideration of possible allocation.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, June 3, 1998, Volume 98-6, pages 22 and 23.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Tom Hemker at 208-334-2920.

DATED this 18th day of November 1998.

W. Dallas Burkhalter, Deputy Attorney General
PO Box 25, Boise, ID 83707
208-334-3715/FAX 208-334-2148

**IDAPA 13
TITLE 01
Chapter 04**

RULES GOVERNING LICENSING

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 98-6, June 3, 1998,
pages 22 and 23.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 13 - IDAHO FISH AND GAME COMMISSION
13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS

DOCKET NO. 13-0108-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, and Section 36-104(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The Legislature provided authority for an allocation of tags for outfitter clients as the proposed Elk Zones are implemented - See Section 36-408(d), Idaho Code.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, January 7, 1998, Volume 98-1, pages 56 through 61.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lonk Kuck, 208-334-2920.

DATED this 18th day of November 1998.

W. Dallas Burkhalter, Deputy Attorney General
PO Box 25, Boise, ID 83707
208-334-3715/FAX 208-334-2148

IDAPA 13
TITLE 01
Chapter 08

RULES GOVERNING THE TAKING OF BIG GAME ANIMALS

There are no substantive changes
from the proposed rule text.

The original text was published in the Idaho
Administrative Bulletin, Volume 98-1, January 7, 1998,
pages 56 through 61.

This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.

IDAPA 13 - IDAHO FISH AND GAME COMMISSION
13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS

DOCKET NO. 13-0108-9802

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, and Section 36-104(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Set 1998 hunting seasons.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, May 6, 1998, Volume 98-5, pages 43 through 127.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lonk Kuck at 208-334-2920.

DATED this 18th day of November 1998.

W. Dallas Burkhalter, Deputy Attorney General
PO Box 25, Boise, ID 83707
208-334-3715/FAX 208-334-2148

IDAPA 13
TITLE 01
Chapter 08

RULES GOVERNING THE TAKING OF BIG GAME ANIMALS

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 98-1, May 6, 1998,
pages 43 through 127.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 13 - IDAHO FISH AND GAME COMMISSION
13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS

DOCKET NO. 13-0109-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, and Section 36-104(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

To lengthen the sharp-tailed grouse season in Area 3 (Southeast Idaho) from 16 to 30 days, to set the waterfowl seasons within the federal guidelines.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, January 7, 1998, Volume 98-1, pages 68 through 72.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Gary Will, 208-334-2920.

DATED this 18th day of November 1998.

W. Dallas Burkhalter
Deputy Attorney General
PO Box 25, Boise, ID 83707
208-334-3715/FAX 208-334-2148

IDAPA 13
TITLE 01
Chapter 09

RULES GOVERNING THE TAKING OF GAME BIRDS

There are no substantive changes
from the proposed rule text.

The original text was published in the Idaho
Administrative Bulletin, Volume 98-1, January 7, 1998,
pages 68 through 72.

This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.

IDAPA 13 - IDAHO FISH AND GAME COMMISSION
13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS

DOCKET NO. 13-0109-9803

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, and Section 36-104(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Establishes upland game bird seasons for 1997-98 and 1998-99, and crane and early September Canada goose seasons for 1997-98.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, July 1, 1998, Volume 98-7, pages 71 through 78.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Gary Will at 208-334-2920.

DATED this 18th day of November 1998.

W. Dallas Burkhalter
Deputy Attorney General
PO Box 25, Boise, ID 83707
208-334-3715/FAX 208-334-2148

IDAPA 13
TITLE 01
Chapter 09

RULES GOVERNING THE TAKING OF GAME BIRDS

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 98-7, July 7, 1998,
pages 71 through 78.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

**13.01.10 - RULES GOVERNING THE IMPORTATION, POSSESSION, RELEASE,
SALE, OR SALVAGE OF WILDLIFE**

DOCKET NO. 13-0110-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, and Section 36-104(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Establishes antler pick-up seasons in the Southeast Region.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, June 3, 1998, Volume 98-6, pages 24 and 25.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lonk Kuck at 208-334-2920.

DATED this 18th day of November 1998.

W. Dallas Burkhalter, Deputy Attorney General
PO Box 25, Boise, ID 83707
208-334-3715/FAX 208-334-2148

**IDAPA 13
TITLE 01
Chapter 10**

**RULES GOVERNING THE IMPORTATION, POSSESSION, RELEASE,
SALE, OR SALVAGE OF WILDLIFE**

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 98-6, June 3, 1998,
pages 24 and 25.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 13 - IDAHO FISH AND GAME COMMISSION
13.01.10 - IMPORTATION, RELEASE, SALE, OR SALVAGE OF WILDLIFE

DOCKET NO. 13-0110-9802

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, and Section 36-104(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Amend rules to accommodate a proposed large commercial wildlife park.

Added a requirement for a bond to cover the potential cost of capture of animals or cleanup of a commercial wildlife facility.

The proposed rules have been amended in response to public comment and to make typographical, transcriptional, and clerical corrections to the rules and are being amended pursuant to Section 67-5227, Idaho Code.

Only those Sections that have been changed are being published in this bulletin. The original text of the proposed rule was published in the Idaho Administrative Bulletin, October 7, 1998, Volume 98-10, pages 56 through 70.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Steve Barton at 208-334-3781.

DATED this 18th day of November 1998.

W. Dallas Burkhalter
Deputy Attorney General
PO Box 25
Boise, ID 83707
208-334-3715
FAX 208-334-2148

IDAPA 13
TITLE 01
Chapter 10

IMPORTATION, RELEASE, SALE, OR SALVAGE OF WILDLIFE

There are substantive changes
from the proposed rule text.

Only those sections that have changed from the
original proposed text are printed in this
Bulletin following this notice.

The complete original text was published in the
Idaho Administrative Bulletin, Volume 98-10, October 7, 1998,
pages 56 through 70.

This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature
for final adoption.

THE FOLLOWING IS TEXT OF DOCKET NO. 13-0110-9802

400. ~~PRIVATE ZOOS, MENAGERIES, ANIMAL DISPLAYS, PRIVATE WILDLIFE PARKS AND COMMERCIAL WILDLIFE FARMS FACILITIES.~~

01. General. No person shall operate or maintain a commercial wildlife facility ~~private zoo, menagerie, animal display, private wildlife park or commercial wildlife farm (hereafter wildlife facility)~~ without obtaining the proper permit or license ~~facility licenses~~ from the Idaho Department of Fish and Game, ~~including import permits if the wildlife is to be brought into Idaho from another state.~~ All permittees and licensees shall comply with the following rules. (7-1-93)()

02. Compliance with City and County Ordinances and Federal Law. No person shall maintain a wildlife facility without first obtaining certification from the relevant city or county zoning and planning commissions that such establishment is in compliance with all existing county ordinances. In addition, all such persons must obtain certification from the U.S. Department of Agriculture that they are in compliance with federal laws. (7-1-93)()

03. ~~Permits and Licenses.~~ (7-1-93)()

a. Each facility must have ~~all~~ an appropriate permits and facility licenses. ~~Permits and licenses are available from Idaho Department of Fish and Game regional offices. Permits are issued free of charge. The commercial wildlife farm license fee is ten dollars (\$10). Cost of the license shall be determined in Section 36-703(a)(6), Idaho Code.~~ (7-1-93)()

b. ~~The facilities must be inspected by the Idaho Department of Fish and Game before a permit or license is issued.~~ Licenses shall be displayed at the licensed facility in plain view at all times. (7-1-93)()

c. ~~Permits and licenses shall be displayed at the permitted or licensed facility in plain view at all times.~~ Licenses may be revoked by the Director of the Idaho Fish and Game Department for failure to comply with Chapter 7, Title 36, Idaho Code or rules promulgated pursuant thereto or for violating any license or permit conditions. In case of revocation, all animals shall be removed by owner or by the Idaho Department of Fish and Game at owner's expense. (7-1-93)()

d. Permits and licenses may be revoked by the Director of the Idaho Fish and Game Department for failure to comply with Chapter 7, Title 36, Idaho Code or rules promulgated pursuant thereto. (7-1-93)

e. Persons in violation of Chapter 7 of Title 36, Idaho Code and/or these rules shall be notified in writing and shall have ten (10) days to correct the violation. If at the end of that time the violation is not corrected, the Director may revoke any existing permit or license and may refuse to issue any future permit. Such revocation or refusal to issue a future permit shall be in addition to any criminal charges that may be filed. (7-1-93)

04. Applications. Application for permits or licenses to import and/or possess wildlife shall be on a form prescribed by the Department of Fish and Game. A separate application shall be made for each facility ~~unless the facility requires a combination of permits or permits and a license. In that event a single application may be made indicating which permits or combination of permits and license is being applied for~~ and for any animal(s) imported after a facility is licensed. The application shall include: (7-1-93)()

- a. The name and address of the applicant. (7-1-93)
- b. Proof of compliance with existing city/county zoning and/or ordinance. ()
- ~~b~~c. The name and address of the owner(s) of the wildlife if not the applicant. (7-1-93)
- ~~c~~d. The location of the proposed facility, including a legal description of the land and the approximate space devoted to the facility. (7-1-93)
- ~~d~~e. The name and address of the owner of the property if not the applicant. (7-1-93)
- ~~e~~f. The number and kinds of wildlife being or to be kept. (7-1-93)
- ~~f~~g. The date upon which each animal ~~was, or~~ is to be, obtained. (7-1-93)()
- ~~g~~h. The source, including address and telephone number, from which each animal was, or is to be, obtained, and health certificate for all animals (see Rule 101) addressing diseases of concern. If already in possession, the type of permit or license under which each animal is possessed. (7-1-93)()
- ~~h~~i. Specifications of pens and shelters furnished for each kind of animal. (7-1-93)
- ~~i~~j. Specifications of the guard fence or other security measures to prevent escape or protect the public from injury by the animals. (7-1-93)()

05. Inspections. The ~~permittee or~~ licensee shall make available for inspection all records, all wildlife, and the facilities covered by the ~~permit or~~ license at any reasonable time upon request of the Idaho Department of Fish and Game. (7-1-93)()

06. Evidence of Legal Possession. Records shall include evidence of legal possession of all wildlife kept at the facility or under the permits or licenses, including licenses, permits, receipts, invoices, bills of lading, or other satisfactory evidence of ownership. The records shall also identify all animals born at the facility, exported from the facility, or transported within the state. (7-1-93)()

07. Dead Wildlife. Record of inspection by a licensed veterinarian shall be kept for all wildlife which die on the premises, and a copy shall be forwarded to the Department of Fish and Game Wildlife Laboratory within ten (10) days of the death of the animal. ()

078. Cages or Enclosures. (7-1-93)

a. All wildlife held in captivity in a wildlife facility shall be confined at all times in cages or pens of such structure or type of construction that it will be impossible for such animals to escape. (7-1-93)

b. ~~Animals that would reasonably pose a threat to human safety if allowed to run freely~~ Big game animals, including bear and mountain lion, shall be confined in enclosures that meet the following minimum requirements: (7-1-93)()

- i. Has a floor made of cement or concrete at least three (3) inches thick into which metal fence stakes are permanently placed or a floor that consists of chain link or other material that will preclude the animal digging through the floor to escape; (7-1-93)
- ii. Has a chain link fence of at least eight (8) feet in height with barbed wire overhang; (7-1-93)
- iii. Has a cage top; (7-1-93)
- iv. Has any other configuration such as a pit that will preclude escape. (7-1-93)
- c. All such cages and/or enclosures shall be of sufficient size to give the animal or bird confined ample space for exercise and to avoid being overcrowded. (7-1-93)
 - i. The length of the cage or enclosure shall be a minimum of four (4) times the body length (tip of nose to base of tail) of the animal being kept, reptiles excepted. (7-1-93)
 - ii. The width shall be at least three-fourths (3/4) of the cage length. (7-1-93)
 - iii. For the second animal housed in cage, floor space shall be increased twenty-five percent (25%) and for each additional animal housed in the cage, floor space shall be increased fifteen percent (15%). Cages with tops shall be of reasonable height to accommodate the animals contained therein. No nails or other sharp protrusions which might injure or impair the animal shall be allowed within the cages. (7-1-93)
- d. All cages or enclosures shall be constructed to prevent entrance by other animals and prevent harm to or by the general public. Cages, fencing, and guardrails shall be kept in good repair at all times; and gates shall be securely fastened with latches or locks. (7-1-93)()
 - ~~i. Substantial guard rails not less than thirty six (36) inches high, supported or fully enclosed with wire mesh not larger than two (2) inches and spaced not more than two (2) inches from the ground shall be constructed around all cages or enclosures. (7-1-93)~~
 - ~~ii. On the side or sides where the public may approach the cage or enclosure the guard rail shall be a distance of not less than four (4) feet from the enclosure in which such animals are confined. (7-1-93)~~
 - ~~iii. Cages, fencing and guard rails shall be kept in good repair at all times and gates or doors shall be securely fastened with latches or locks. (7-1-93)~~
- e. Each cage or enclosure for birds and smaller animals shall be provided with a den, nest box or other suitable housing containing adequate bedding material as may be required for the comfort of the species held. A suitable shelter or shield shall be provided for larger animals for protection from inclement weather and from the sun. At least one (1) wall of the enclosure shall be constructed so as to provide a windbreak for the animal confined. (7-1-93)
- f. Cages or enclosures shall be kept dry if containing terrestrial animals and with adequate water if containing aquatic animals. Where natural climate of the species being held differs from the climate of the area where the wildlife facility is located, provisions shall be made to adjust holding conditions, as nearly as possible, to natural habitat. (7-1-93)
- g. Cages or enclosures shall be kept free of offensive odors and/or other unhealthy conditions. All cages or enclosures shall be properly disinfected and cleaned at least once each day. (7-1-93)

09. Large Commercial Wildlife Facilities. Commercial wildlife facilities which are of a size large enough or with a large number of animals which are incompatible with the cage or enclosure requirements of Subsection 400.07 may, in the director's discretion, be addressed on a case-by-case basis. It is intended that such facilities would house three (3) or more species or encompass display or exhibit areas larger than one (1) acre to qualify for consideration. ()

a. Animals will be displayed in such a way as to preserve their dignity and in a natural appearing environment. The displays should enhance appreciation for the species and its natural history. ()

b. The cages and/or enclosures shall be of such structure or type of construction to prevent escape of the captive wildlife, or damage to native wildlife through habitat degradation, genetic contamination, competition, or disease. ()

c. Applications for a commercial wildlife facility license shall generally meet the requirements of Subsection 400.04. Additionally, the application shall identify the veterinarian of record for the facility. ()

d. The department will refer to the standards such as those set by the American Zoological Association to develop cage, open space, shelter, and enclosure requirements. Such requirements may include, but not limited to, fence specifications, electric fence specifications, pits or moats, or buried fencing. ()

e. All applications shall be accompanied by a bond to the state of Idaho, Department of Fish and Game in the amount of fifty thousand dollars (\$50,000) or an amount equal to ten percent (10%) of the total facility construction cost plus two thousand dollars (\$2,000) per animal, which ever is greater, executed by a qualified surety duly authorized to do business in the state of Idaho, to guarantee performance of license conditions and to reimburse the Department for any costs incurred for clean-up of abandoned or closed facilities, removal of animals from abandoned or closed facilities, capture or termination of escaped animals, or disease control. With prior approval, the applicant may submit a cash bond to the Department including, but not limited to, certificates of deposit, registered checks, certified funds, and money orders. ()

f. The specific requirements shall be set forth as license conditions. Violation of a license condition shall be a violation of these rules. ()

108. Humane Treatment. (7-1-93)

a. All wildlife being held in captivity under the provisions of Title 36, Idaho Code and these rules shall be handled in a humane manner and kept free from parasites, sickness or disease, and if they become infected, injured or unsightly shall be removed from public display by the permit holder. (7-1-93)

b. Any animal afflicted with parasites or disease shall immediately be given professional medical attention or be destroyed in a humane manner. A complete record of illness, treatment and disposition must be maintained by the permit holder. (7-1-93)

c. A certificate from a licensed veterinarian shall be supplied to the Idaho Department of Fish and Game at least once each year or upon demand stating the physical condition or health of animals confined under the permit. Certificates shall be upon forms furnished by the Department. (7-1-93)

d. Regular feeding schedules shall be maintained for all animals. Food must be adequate and varied and so far as possible consistent with food ordinarily eaten by such animals. Food must be of good quality and stores of same shall be kept in suitable containers with tight fitting covers so as to render it inaccessible to rats, flies, or other vermin. (7-1-93)()

i. Food must be of good quality and stores of same shall be kept in suitable containers with tight fitting covers so as to render it inaccessible to rats, flies, or other vermin. (7-1-93)

ii. The public shall not be permitted to feed any animals other than monkeys. Proper signs shall be conspicuously posted on cages or enclosures advising the public to refrain from feeding or annoying the birds or animals. (7-1-93)

e. Fresh or running water for drinking purposes shall be available in cages or enclosures at all times. Drinking fountains or other receptacles shall be available in cages or enclosures at all times and shall be kept clean and in a sanitary condition. (7-1-93)

f. Any animals with a propensity to fight or which are otherwise incompatible shall be kept segregated. (7-1-93)

g. At no time shall any wildlife held for public display or exhibition be chained or otherwise tethered to any stake, post, tree, building, or other anchorage. (7-1-93)

11. Sale of Animal Meat or Parts. ()

a. A commercial wildlife facility licensee may sell or otherwise dispose of the carcass, parts, or by-products of a properly identified big game animal taken from a commercial wildlife facility only upon preparing an invoice or bill of sale as specified by the Idaho Department of Fish and Game and attaching a copy of it to the lot shipment, carcass, or container and keeping a copy for his records. Upon the attaching of the invoice or bill of sale to the carcass, parts, or by-products of the animal, the same may be transported to the transferee named on the invoice or bill of sale. ()

b. The licensee may sell commercial wildlife facility animals for meat upon compliance with all applicable health laws, USDA, and Idaho Department of Agriculture regulations. ()

12. Responsibility of License Holder. The license holder shall be responsible for the care of the wildlife in possession and the protection of the public. The license holder shall be liable for the expense of capture or destruction of any escaped wildlife, including any costs incurred by the Department. The Department is concerned only with the protection of wildlife and makes no representation concerning public safety of the licensed animals or facilities. ()

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, and Section 36-104(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Update rules based on regional biological and public input.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, January 7, 1998, Volume 98-1, pages 77 through 115.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Bill Horton, 208-334-3791.

DATED this 18th day of November 1998.

W. Dallas Burkhalter, Deputy Attorney General
PO Box 25, Boise, ID 83707
208-334-3715/FAX 208-334-2148

**IDAPA 13
TITLE 01
Chapter 11**

RULES GOVERNING FISH

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 98-1, January 7, 1998,
pages 77 through 115.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-9802

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, and Section 36-104(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

House Bill 630 created a two fishing pole license validation on waters designated by Commission rule. The rule change identifies those waters where two pole fishing will be allowed.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, July 1, 1998, Volume 98-7, pages 79 and 80.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Bill Horton at 208-334-3791.

DATED this 18th day of November 1998.

W. Dallas Burkhalter, Deputy Attorney General
PO Box 25, Boise, ID 83707
208-334-3715/FAX 208-334-2148

**IDAPA 13
TITLE 01
Chapter 11**

RULES GOVERNING FISH

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 98-7, July 1, 1998,
pages 79 and 80.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.14 - RULES GOVERNING FALCONRY

DOCKET NO. 13-0114-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, and Section 36-104(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

To set duck seasons within the recently established federal framework.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, January 7, 1998, Volume 98-1, pages 120 and 121.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Gary Will, 208-334-2920.

DATED this 18th day of November 1998.

W. Dallas Burkhalter, Deputy Attorney General
PO Box 25, Boise, ID 83707
208-334-3715/FAX 208-334-2148

**IDAPA 13
TITLE 01
Chapter 14**

RULES GOVERNING FALCONRY

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 98-1, January 7, 1998,
pages 120 and 121.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.15 - RULES GOVERNING THE USE OF DOGS

DOCKET NO. 13-0115-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, and Section 36-104(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Public concerns on the use of hound-hunting permits. Address the requirements for a hound-hunting permit.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, May 6, 1998, Volume 98-5, pages 128 through 131.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact John Beecham at 208-334-2920.

DATED this 18th day of November 1998.

W. Dallas Burkhalter, Deputy Attorney General
PO Box 25, Boise, ID 83707
208-334-3715/FAX 208-334-2148

**IDAPA 13
TITLE 01
Chapter 15**

RULES GOVERNING THE USE OF DOGS

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 98-5, May 6, 1998,
pages 128 through 131.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 13 - IDAHO FISH AND GAME COMMISSION
13.01.16 - THE TRAPPING OF PREDATORY AND UNPROTECTED WILDLIFE
AND THE TAKING OF FURBEARING ANIMALS

DOCKET NO. 13-0116-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, and Section 36-104(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

To establish furbearer seasons for 1997-98 and 1998-99.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, July 1, 1998, Volume 98-7, pages 81 through 95.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Wayne Melquist at (208) 334-2920.

DATED this 18th day of November 1998.

W. Dallas Burkhalter, Deputy Attorney General
PO Box 25, Boise, ID 83707
208-334-3715/FAX 208-334-2148

IDAPA 13
TITLE 01
Chapter 16

THE TRAPPING OF PREDATORY AND UNPROTECTED WILDLIFE
AND THE TAKING OF FURBEARING ANIMALS

There are no substantive changes
from the proposed rule text.

The original text was published in the Idaho
Administrative Bulletin, Volume 98-7, July 1, 1998,
pages 81 through 95.

This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.

IDAPA 13 - IDAHO FISH AND GAME COMMISSION
13.01.20 - SELECTION RULES OF NEW FISH AND GAME LICENSE VENDORS

DOCKET NO. 13-0120-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, and Section 36-104(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Delete obsolete language as requested by auditors.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, October 7, 1998, Volume 98-10, pages 71 and 72.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Steve Barton at 208-334-3781.

DATED this 18th day of November 1998.

W. Dallas Burkhalter, Deputy Attorney General
PO Box 25, Boise, ID 83707
208-334-3715/FAX 208-334-2148

IDAPA 13
TITLE 01
Chapter 20

SELECTION RULES OF NEW FISH AND GAME LICENSE VENDORS

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 98-10, October 7, 1998,
pages 71 and 72.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO
DOCKET NO. 16-0101-9702

NOTICE OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The amendments to the temporary rule are effective December 1, 1998. This rule has been adopted by the Board of Health and Welfare (Board) and is now pending review by the 1999 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-fifth Idaho Legislature unless prior to that date the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that the Board has adopted a pending rule and amended a temporary rule. The action is authorized by Sections 39-105 and 39-107, Idaho Code. In addition, this rulemaking is mandated by the United States Environmental Protection Agency pursuant to 61 Fed. Reg. 68,384-68,404 (December 27, 1996) (codified at 40 CFR Part 63 Subpart B).

DESCRIPTIVE SUMMARY: In February 1998, the Board adopted a temporary rule to implement the federal program established under Sections 112(g) and 112(j) of the Clean Air Act. In May 1998, the Department proposed final adoption of the February 1998 temporary rule. A detailed summary of the reasons for the proposed rule change is set forth in the Idaho Administrative Bulletin, Volume 98-5, May 6, 1998, pages 133 through 135. The Department received public comments concerning the proposed rule and has revised the initial proposal as provided in Section 67-5227, Idaho Code. After consideration of public comments, the Department recommended that the Board adopt the revised version of the rule. The Department's Rulemaking and Public Comment Summary, which contains a complete consideration of the issues raised by the public, is included in the rulemaking record maintained by the Division of Environmental Quality, 1410 N. Hilton, Boise, ID 83706. Rather than keep the temporary rule in place while the pending rule awaits legislative review, the Board amended the temporary rule with the same revisions which have been made to the proposed rule.

The original text of the proposed rule was published in the May 6, 1998, Idaho Administrative Bulletin, Volume 98-5, pages 133 through 135.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact Tim Teater at (208) 373-0502.

Dated this 6th day of January, 1999.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255

IDAPA 16
TITLE 01
Chapter 01

RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The complete original text was published in the Idaho Administrative Bulletin, Volume 98-5, May 6, 1998, pages 133 through 135.

This rule has been adopted as Final by the Agency and is now pending review by the 1999 Idaho State Legislature for final adoption.

THE FOLLOWING IS TEXT OF DOCKET NO. 16-0101-9702

~~214. EMISSIONS LIMITATION FOR NEW AND RECONSTRUCTED MAJOR SOURCES OF HAZARDOUS AIR POLLUTANTS.~~

~~01. Definitions for Section 214. The definitions of the terms immediately below apply only to this section. Unless specifically defined otherwise immediately below, all terms in this section shall have the meanings provided in Sections 006 and 007 of these rules. (4-15-98)T~~

~~a. "Construct a Major Source" has the meaning provided in 40 CFR Parts 63.40 through 63.44 as incorporated by reference in these rules at Section 107. (4-15-98)T~~

~~b. "Major Source" has the meaning provided in Section 7412(a) of the Clean Air Act and the meaning provided in 40 CFR Parts 63.40 through 63.44 as incorporated by reference in these rules at Section 107. (4-15-98)T~~

~~e. "Maximum Achievable Control Technology (MACT)" means an emission standard applicable to major sources of hazardous air pollutants that requires the maximum degree of reduction in emissions deemed achievable for either new or existing sources. "Maximum Achievable Control Technology (MACT)" has the meaning provided in 40 CFR Parts 63.40 through 63.44 as incorporated by reference in these rules at Section 107. (4-15-98)T~~

~~d. "New Source" means a stationary source, the construction of which is commenced after proposal of a federal MACT or the effective date of this subsection, whichever is earlier. (4-15-98)T~~

~~e. "Reconstruct a Major Source" has the meaning provided in 40 CFR Parts 63.40 through 63.44 as incorporated by reference in these rules at Section 107. (4-15-98)T~~

~~02. Federal MACT. Any person who proposes to construct or reconstruct a major source of hazardous air pollutants (HAP) after an applicable emissions standard has been proposed by EPA pursuant to Section 7412(d), Section 7412(n), or Section 7429 of the Clean Air Act shall comply with the requirements and emission standard for new sources when promulgated by EPA. (4-15-98)T~~

~~03. State MACT. Any person who proposes to construct or reconstruct a major source of HAP before MACT requirements applicable to that source have been proposed by EPA and after the effective date of this rule shall comply with new and reconstructed source MACT requirements as determined by the Director. The Director shall make this determination on a case by case basis in accordance with the guidance in 40 CFR Parts 63.40 through 63.44 as incorporated by reference in these rules at Section 107. (4-15-98)T~~

~~04. Compliance Schedule. The owner or operator of the proposed major source of HAP must demonstrate to the Department that the source will achieve the required emissions limitation prior to commencing operation. (4-15-98)T~~

214. DEMONSTRATION OF PRECONSTRUCTION COMPLIANCE FOR NEW AND RECONSTRUCTED MAJOR SOURCES OF HAZARDOUS AIR POLLUTANTS.

01. Permitting Authority. For purposes of this section, Sections 112(g) and (j) of the Clean Air Act, and 40 CFR Part 63, the permitting authority shall be the Department. (12-1-98)T

02. Definitions. Unless specifically provided otherwise, the definitions for terms set forth in this section shall be the definitions set forth in Section 112 of the Clean Air Act and 40 CFR Part 63 as incorporated by reference into these rules at Section 107. For purposes of determining if a source is a major source of hazardous air pollutants, the definition of potential to emit at Section 006 of these rules shall apply. (12-1-98)T

03. Compliance with Federal MACT. All owners or operators of major sources of hazardous air pollutants which are subject to an applicable Maximum Available Control Technology (MACT) standard promulgated by EPA pursuant to Section 112 of the Clean Air Act and 40 CFR Part 63 shall comply with the applicable MACT standard and such owners or operators are not subject to Subsections 214.04 and 214.05. (12-1-98)T

04. Requirement to Obtain Preconstruction MACT Determination from the Director. No owner or operator may construct or reconstruct a major source of hazardous air pollutants unless such owner or operator has obtained a MACT standard determination from the Director. The Director shall make the MACT standard determination on a case by case basis and in accordance with Section 112(g)(2)(B) of the Clean Air Act and 40 CFR 63.40 through 63.44 as incorporated by reference into these rules at Section 107. (12-1-98)T

05. Development of MACT by the Director after EPA Deadline. In the event that EPA fails to promulgate a MACT standard for a category or subcategory of major sources of hazardous air pollutants identified by the EPA under the Clean Air Act by the date established under Section 112(e) of the Clean Air Act, the owner or operator of any major source of hazardous air pollutants in such category or subcategory shall submit an application to the Director for a MACT standard determination. The Director shall make the MACT standard determination on a case by case basis and in accordance with Section 112(j) of the Clean Air Act and 40 CFR 63.50 through 63.56 as incorporated by reference into these rules at Section 107. (12-1-98)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 16-0101-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Health and Welfare (Board) and is now pending review by the 1999 Idaho State Legislature for final approval. In June 1998, the Board adopted this rule as a temporary rule, which is currently effective. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-fifth Idaho Legislature unless prior to that date the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and text of the pending rule with an explanation of the reasons for the change.

A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, Volume 98-8, August 5, 1998, pages 29 through 62. The agency received no public comments on the proposal, and the rule has been adopted as initially proposed. The rulemaking record is maintained at the Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact Dan Salgado at (208) 373-0502.

Dated this 6th day of January, 1999.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255

IDAPA 16
TITLE 01
Chapter 01

RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

There are no substantive changes from the proposed rule text.

**The original text was published in the Idaho Administrative Bulletin,
Volume 98-8, August 5, 1998, pages 29 through 62.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO
DOCKET NO. 16-0101-9802

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective November 13, 1998.

AUTHORITY: In compliance with Sections 67-5226(1) and 67-5221(1), Idaho Code, notice is hereby given that the Board of Health and Welfare (Board) has adopted a temporary rule and the Department of Health and Welfare, Division of Environmental Quality (Department) is commencing proposed rulemaking to promulgate a final rule. The action is authorized by Sections 39-105 and 39-107, Idaho Code. In addition, this rulemaking is required under 40 CFR Part 51, "Requirements for Adoption and Submittal of Implementation Plans".

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this proposed rulemaking will be held as follows:

Tuesday, February 9, 1999, 6:30 p.m.
Division of Environmental Quality Conference Center
1410 N. Hilton, Boise, Idaho

The meeting site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: This rulemaking has been undertaken to address U.S. Environmental Protection Agency comments on Idaho's Implementation Plan submittals from the past four years, to allow the use of mobile source offsets, to review alternatives to the process weight rule, and to add a section on emergency situations and permitting revisions. Additional changes to the rules were made as a result of negotiations. Subsection 625.02 (Visible Emissions) contains unintentional changes adopted by the Board as a temporary rule. The Department intends that Subsection 625.02 have language consistent with that in Section 625.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, the Department intends to present the final proposal to the Board of Health and Welfare in 1999 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2000 session of the Idaho Legislature.

NEGOTIATED RULEMAKING: The text of the rule is based on a consensus recommendation resulting from the negotiated rulemaking process. The negotiation was open to the public. Participants in the negotiation included industry representatives and EPA. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Volume 98-7, July 1, 1998, page 127.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule confers a benefit and meets federal requirements.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rulemaking, contact Sue Richards at (208) 373-0502.

Anyone may submit written comments regarding this proposed rule. All written comments must be received by the undersigned on or before February 10, 1999.

Dated this 6th day of January, 1999.

Paula Junae Saul
Environmental Quality Section

Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
Fax No. (208)373-0481

THE FOLLOWING IS TEXT OF DOCKET NO. 16-0101-9802

006. GENERAL DEFINITIONS.

01. ~~(RESERVED)~~ Accountable. Any SIP emission trading program must account for the aggregate effect of the emissions trades in the demonstration of reasonable further progress, attainment, or maintenance.

~~(3-7-95)~~(11-13-98)T

02. Act. The Environmental Protection and Health Act of 1972 as amended (Sections 39-101 through 39-130, Idaho Code).

(5-1-94)

03. Actual Emissions. The emission rate, in mass per unit time, of an air pollutant from a stationary source or emissions unit, averaged over the two (2) year period which is representative of normal operation and which precedes a particular date or the date on which an application for a permit was filed. Actual emissions shall be calculated using actual operating hours, production rates, and types of materials processed, stored, or combusted during this time period, except that The actual rate of emissions of a pollutant from an emissions unit as determined in accordance with the following::

~~(5-1-94)~~(11-13-98)T

a. ~~The Department may allow the use of a different time period upon a determination that it is more representative of normal operation; In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.~~

~~(5-1-94)~~(11-13-98)T

b. ~~The Department may consider emission rates specifically allowed in a permit to construct or operating permit to be presume that the source-specific allowable emissions for the unit are equivalent to actual emissions if the State Implementation Plan demonstration of attainment and/or maintenance is explicitly based on the permitted emissions; and of the unit~~

~~(5-1-94)~~(11-13-98)T

c. ~~For any stationary source or emissions unit (other than an electric utility steam generating unit as specified below) which has not yet begun normal operations on the particular date, actual emissions shall be considered to be those allowed in the applicable permit to construct or operating permit equal the potential to emit of the unit on that date.~~

~~(5-1-94)~~(11-13-98)T

d. For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the Department, on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years may be required by the Department if it determines such a period to be more representative of normal source post-change operations.

(11-13-98)T

04. Air Pollutant/Air Contaminant. Any substance, including but not limited to, dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon or particulate matter or any combination thereof, ~~regulated under the Act, 42~~

~~U.S.C. Sections 7401 through 7671q, these rules or any federal air quality regulation.~~ (5-1-94)(11-13-98)T

~~05. Air Pollution. The presence in the outdoor atmosphere of any air pollutant or combination thereof in such quantity of such nature and duration and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property.~~ (11-13-98)T

~~056. Air Quality. The specific measurement in the ambient air of a particular air pollutant at any given time.~~ (5-1-94)

~~067. Air Quality Criterion. The information used as guidelines for decisions when establishing air quality goals and air quality standards.~~ (5-1-94)

~~08. Allowable Emissions. The allowable emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:~~ (11-13-98)T

~~a. The applicable standards set forth in 40 CFR part 60 and 61;~~ (11-13-98)T

~~b. Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or~~ (11-13-98)T

~~c. The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.~~ (11-13-98)T

~~079. Ambient Air. That portion of the atmosphere, external to buildings, to which the general public has access.~~ (5-1-94)

~~0810. Ambient Air Quality Violation. Any single ambient concentration of any regulated air pollutant that exceeds any causes or contributes to an exceedance of a national, state or local ambient air quality standard at any point in an area outside the source property line as determined by 40 CFR Part 50.~~ (5-1-94)(11-13-98)T

~~0911. Atmospheric Stagnation Advisory. An air pollution alert declared by the Department when regulated air pollutant impacts have been observed and/or meteorological conditions are conducive to additional regulated air pollutant buildup.~~ (5-1-94)(11-13-98)T

~~102. Attainment Area. Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as having ambient concentrations equal to or less than national primary or secondary ambient air quality standards for a particular regulated air pollutant or air pollutants.~~ (5-1-94)(11-13-98)T

~~143. Baseline (Area, Concentration, Date). See Section 579.~~ (5-1-94)

~~124. Best Available Control Technology (BACT). An emission standard (including a visible emissions standard) based on the maximum control of emissions achievable through application of production processes or available methods, systems, and techniques (including fuel cleaning or treatment or innovative fuel combination techniques) for control of such contaminants. BACT shall be determined on a case by case basis, taking into account energy, environmental and economic impacts, and other costs, and shall be at least as stringent as any applicable Sections of 40 CFR Part 60, 40 CFR Part 61 and 40 CFR Part 63. If an emissions standard is infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed as BACT. An emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Clean Air Act which would be emitted from any proposed major facility or major modification which the Department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any regulated air pollutant which would exceed the emission allowed by any applicable standard under 40 CFR Parts 60 and 61. If the Department determines that technological or economic~~

limitations on the application of measurement methodology to a particular emission unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.
(5-1-94)(11-13-98)T

135. Board. Idaho Board of Health and Welfare. (5-1-94)
146. Breakdown. An unplanned and unforeseeable failure of any air pollution control equipment or emissions unit, including process equipment, which may cause excess emissions where such failure is not intentional or the result of negligence or improper maintenance. (5-1-94)(11-13-98)T
157. BTU. British thermal unit. (5-1-94)
168. Clean Air Act. The federal Clean Air Act, 42 U.S.C. Sections 7401 through 7671q. (5-1-94)
179. Collection Efficiency. The overall performance of the air cleaning device in terms of ratio of materials collected to total input to the collector unless specific size fractions of the contaminant are stated or required. (5-1-94)
1820. Commence Construction or Modification. To engage in a program of construction or modification, or to engage in a program of planned grading, dredging, or landfilling, specifically designed for the stationary source or facility in preparation of the fabrication, erection, or installation of the building components of the stationary source or facility. For the purpose of this definition, delays or interruptions resulting from natural disasters, strikes, litigation, and other matters beyond the control of the owner, shall be disregarded in determining whether a construction or a modification program has commenced and/or is continuous. In general, this means initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.
(5-1-94)(11-13-98)T
1921. Complete. A determination made by the Department that all information needed to process a permit application has been submitted for review. (5-1-94)
202. Construction. Fabrication, erection, installation, or modification of a stationary source or facility. (5-1-94)
243. Control Equipment. Any method, process or equipment which removes, reduces or renders less noxious, air pollutants discharged into the atmosphere. (5-1-94)
224. Controlled Emission. An emission which has been treated by control equipment to remove all or part of an air pollutant before release to the atmosphere. (5-1-94)
235. Criteria Air Pollutant. Any of the following: PM-10; sulfur oxides; ozone, nitrogen dioxide; carbon monoxide; ~~fluorides~~; lead. (7-1-97)(11-13-98)T
246. Department. The Department of Health and Welfare. (5-1-94)
257. Designated Facility. Any of the following facilities: (5-1-94)
- a. Fossil-fuel fired steam electric plants of more than two hundred fifty (250) million BTU's per hour heat input; (5-1-94)
- b. Coal cleaning plants (thermal dryers); (5-1-94)
- c. Kraft pulp mills; (5-1-94)

- d. Portland cement plants; (5-1-94)
- e. Primary zinc smelters; (5-1-94)
- f. Iron and steel mill plants; (5-1-94)
- g. Primary aluminum ore reduction plants; (5-1-94)
- h. Primary copper smelters; (5-1-94)
- i. Municipal incinerators capable of charging more than two hundred and fifty (250) tons of refuse per day; (5-1-94)
- j. Hydrofluoric, sulfuric, and nitric acid plants; (5-1-94)
- k. Petroleum refineries; (5-1-94)
- l. Lime plants; (5-1-94)
- m. Phosphate rock processing plants; (5-1-94)
- n. Coke oven batteries; (5-1-94)
- o. Sulfur recovery plants; (5-1-94)
- p. Carbon black plants (furnace process); (5-1-94)
- q. Primary lead smelters; (5-1-94)
- r. Fuel conversion plants; (5-1-94)
- s. Sintering plants; (5-1-94)
- t. Secondary metal production facilities; (5-1-94)
- u. Chemical process plants; (5-1-94)
- v. Fossil-fuel boilers (or combination thereof) of more than two hundred and fifty (250) million BTU's per hour heat input; (5-1-94)
- w. Petroleum storage and transfer facilities with a capacity exceeding three hundred thousand (300,000) barrels; (5-1-94)
- x. Taconite ore processing facilities; (5-1-94)
- y. Glass fiber processing plants; and (5-1-94)
- z. Charcoal production facilities. (5-1-94)
- 268. Director. The Director of the Department of Health and Welfare or his designee. (5-1-94)
- 279. Effective Dose Equivalent. The sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man. The unit of the effective dose equivalent is the rem. It is generally calculated as an annual dose. (5-1-94)

~~2830.~~ Emission. Any controlled or uncontrolled release or discharge into the outdoor atmosphere of any air pollutants or combination thereof. Emission also includes any release or discharge of any air pollutant from a stack, vent, or other means into the outdoor atmosphere that originates from an emission unit. (5-1-94)

~~2931.~~ Emission Standard. A permit or regulatory requirement established by the Department, ~~or a requirement contained in 40 CFR Part 60, 40 CFR Part 61, 40 CFR Part 63 or the State Implementation Plan (SIP), EPA~~ which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission control reduction. ~~(5-1-94)~~(11-13-98)T

~~30.~~ ~~Emission Standard Violation. Any emission rate that exceeds the applicable source-specific emission standard or any action or inaction that contravenes any source specific opacity limit, equipment requirement, fuel specification or required operation or maintenance procedures.~~ (5-1-94)

~~342.~~ Emissions Unit. An identifiable piece of process equipment or other part of a facility which emits or may emit any air pollutant. This definition does not alter or affect the term "unit" for the purposes of 42 U.S.C. Sections 7651 through 7651o. (5-1-94)

~~323.~~ EPA. The United States Environmental Protection Agency and its Administrator or designee. (5-1-94)

~~334.~~ Environmental Remediation Source. A stationary source that functions to remediate or recover any release, spill, leak, discharge or disposal of any petroleum product or petroleum substance, any hazardous waste or hazardous substance from any soil, ground water or surface water, and shall have an operational life no greater than five (5) years from the inception of any operations to the cessation of actual operations. Nothing in this definition shall be construed so as to actually limit remediation projects to five (5) years or less of total operation. (5-1-95)

~~35.~~ Excess Emissions. Emissions of any regulated air pollutant exceeding an applicable emissions standard established for any facility or emissions unit by statute, regulation, rule, permit, or order. (11-13-98)T

~~346.~~ Existing Stationary Source or Facility. Any stationary source or facility that exists, is installed, or is under construction on the original effective date of any applicable provision of this chapter. (5-1-94)

~~357.~~ ~~Facility. All of the combined sources which emit air pollutants, belong to the same industrial grouping (using the Major Groups as described in the Standard Industrial Classification Manual), are located on one (1) or more contiguous or adjacent properties, and are owned or operated by the same person or by persons under common control. All of the pollutant-emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual.~~ (5-1-94)(11-13-98)T

~~368.~~ Federal Class I Area. Any federal land that is classified or reclassified "Class I" pursuant to Section 580. (5-1-94)

~~379.~~ Federal Land Manager. The Secretary of the federal department with authority over any federal lands in the United States. (5-1-94)

~~3840.~~ Fire Hazard. The presence or accumulation of combustible material of such nature and in sufficient quantity that its continued existence constitutes an imminent and substantial danger to life, property, public welfare or adjacent lands. (5-1-94)

~~3941.~~ Fuel-Burning Equipment. Any furnace, boiler, apparatus, stack and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by indirect heat transfer. (5-1-94)

~~402.~~ Fugitive Dust. Fugitive emissions composed of particulate matter. (5-1-94)

~~443.~~ Fugitive Emissions. Those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. (5-1-94)

~~424.~~ Garbage. Any waste consisting of putrescible animal and vegetable materials resulting from the handling, preparation, cooking and consumption of food including, but not limited to, waste materials from households, markets, storage facilities, handling and sale of produce and other food products. (5-1-94)

~~435.~~ Grain Elevator. Any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded. (5-1-94)

~~446.~~ Grain Storage Elevator. Any grain elevator located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean extraction plant which has a permanent grain storage capacity of thirty five thousand two hundred (35,200) cubic meters (ca. 1 million bushels). (5-1-94)

~~457.~~ Grain Terminal Elevator. Any grain elevator which has a permanent storage capacity of more than eighty-eight thousand one hundred (88,100) cubic meters (ca. 2.5 million bushels), except those located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries, and livestock feedlots. (5-1-94)

~~468.~~ Hazardous Air Pollutant (HAP). Any air pollutant ~~which is regulated at its emitting source by 42 U.S.C. Section 7412, 40 CFR Part 61 or 40 CFR Part 63 listed in or pursuant to Section 112(b) of the Clean Air Act.~~ (5-1-94)(11-13-98)T

~~479.~~ Hazardous Waste. Any waste or combination of wastes of a solid, liquid, semisolid, or contained gaseous form which, because of its quantity, concentration or characteristics (physical, chemical or biological) may:

a. Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible, or incapacitating reversible illnesses; or (5-1-94)

b. Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties; provided that such wastes do not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are allowed under a national pollution discharge elimination system permit, or source, special nuclear, or by-product material as defined by 42 U.S.C. Sections 2014(e),(z) or (aa). (5-1-94)

~~4850.~~ Hot-Mix Asphalt Plant. Those facilities conveying proportioned quantities or batch loading of cold aggregate to a drier, and heating, drying, screening, classifying, measuring and mixing the aggregate and asphalt for the purpose of paving, construction, industrial, residential or commercial use. (5-1-94)

~~4951.~~ Incinerator. Any source consisting of a furnace and all appurtenances thereto designed for the destruction of refuse by burning. "Open burning" is not considered incineration. For purposes of these rules, the destruction of any combustible liquid or gaseous material by burning in a flare stack shall be considered incineration. (5-1-94)

~~502.~~ Indian Governing Body. The governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government. (5-1-94)

~~51.~~ Indian Reservation. Any federally recognized reservation established by treaty, agreement, executive order, or act of Congress. (5-1-94)

~~523.~~ Kraft Pulping. Any pulping process which uses, for a cooking liquor, an alkaline sulfide solution containing sodium hydroxide and sodium sulfide. (5-1-94)

~~53.~~ Lowest Achievable Emission Rate (LAER). The rate of emissions based on the most stringent of

the following: (5-1-94)

a. ~~The most stringent emission standard which has been demonstrated in practice by similar stationary sources, facilities, or operations;~~ (5-1-94)

b. ~~The most stringent emission standard in any state implementation plan for similar stationary sources, facilities or operations, unless the owner or operator of the proposed facility demonstrates that such standards are not achievable; or~~ (5-1-94)

e. ~~Any applicable provision in 40 CFR Part 60.~~ (5-1-94)

54. Lowest Achievable Emission Rate (LAER). For any source, the more stringent rate of emissions based on the following: (11-13-98)T

a. The most stringent emissions limitation which is contained in any State Implementation Plan for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or (11-13-98)T

b. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance. (11-13-98)T

545. Major Facility. (5-1-94)

a. ~~Any facility which has actual or allowable emissions of one hundred (100) tons per year or more of any air pollutant. A major facility is either:~~ (5-1-94)(11-13-98)T

i. Any facility which emits, or has the potential to emit, one hundred (100) tons per year or more of any regulated air pollutant; or (11-13-98)T

ii. Any physical change that would occur at a facility not qualifying under Subsection 006.55.a.i. as a major facility, if the change would constitute a new major facility by itself. (11-13-98)T

b. ~~Fugitive dust shall be included in the determination of emissions only for designated facilities and those source categories regulated under 40 CFR Part 60, 40 CFR Part 61, or 40 CFR Part 63. A major facility that is major for volatile organic compounds shall be considered major for ozone.~~ (5-1-94)(11-13-98)T

c. The fugitive emissions of a facility shall not be included in determining for any of the purposes of this Section whether it is a major facility, unless the source is a designated facility or the source belongs to a stationary source category which, as of August 7, 1980, is being regulated under Sections 111 or 112 of the Clean Air Act. (11-13-98)T

556. Major Modification. (5-1-94)

a. ~~Any modification of a major facility that would result in a significant net emission increase of any air pollutant; or Any physical change or change in the method of operation of a major facility that would result in a significant net emissions increase of any regulated air pollutant.~~ (5-1-94)(11-13-98)T

b. ~~Any modification of a facility that would result in a potential emissions increase of any air pollutant of one hundred (100) tons per year or more; Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.~~ (5-1-94)(11-13-98)T

c. ~~Fugitive dust shall be included in the determination of emissions only for designated facilities and those source categories regulated under 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63. A physical change or change in the method of operation shall not include:~~ (5-1-94)(11-13-98)T

- i. Routine maintenance, repair, and replacement; (11-13-98)T
- ii. Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Federal Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act; (11-13-98)T
- iii. Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act; (11-13-98)T
- iv. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste; (11-13-98)T
- v. Use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before December 21, 1976 for sources located in nonattainment areas or before January 6, 1975 for sources located in attainment or unclassified areas, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976 for sources located in nonattainment areas or before January 6, 1975 for sources located in attainment or unclassified areas or under any permit issued by the Department or EPA; (11-13-98)T
- vi. An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 12, 1976 for sources located in nonattainment areas or before January 6, 1975 for sources located in attainment or unclassified areas. (11-13-98)T
- vii. Any change in ownership at a stationary source; (11-13-98)T
- viii. The addition, replacement, or use of a pollution control project at an existing electric utility steam generating unit, unless the Department determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except when the Department has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I, if any, and the Department determines that the increase will cause or contribute to a violation of any national ambient air quality standard or prevention of significant deterioration (PSD) increment, or visibility limitation; (11-13-98)T
- ix. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the State Implementation Plan for the state in which the project is located, and other requirements necessary to maintain the national ambient air quality standard during the project and after it is terminated. (11-13-98)T
567. Member of the Public. For purposes of Subsection 006.8892.a.xxj., a person located at any off-site point where there is a residence, school, business or office. (3-20-97)(11-13-98)T
578. Modification. Any physical change in, or change in the method of operation of, a stationary source or facility which increases the amount of any regulated air pollutant ~~to which an emission or ambient air quality standard applies~~ emitted by such stationary source or facility or which results in the emission of any regulated air pollutant ~~to which an emission or ambient air quality standard applies~~ not previously emitted except that routine maintenance, repair and replacement shall not be considered physical changes, and the following shall not be considered a change in the method of operation: (5-1-94)(11-13-98)T
- a. An increase in the production rate if such increase does not exceed the operating design capacity of the affected stationary source, and if a more restrictive production rate is not specified in a permit; (5-1-94)
- b. An increase in hours of operation if more restrictive hours of operation are not specified in a permit; and (5-1-94)
- c. Use of an alternative fuel or raw material if ~~prior to January 6, 1975 and the date any emission or ambient air quality standard becomes applicable to such stationary source,~~ the affected stationary source is

specifically designed to accommodate such ~~alternative use and fuel or raw material and use of such fuel or raw material~~ is not specifically prohibited in a permit. ~~(5-1-94)~~(11-13-98)T

589. Monitoring. Sampling and analysis, in a continuous or noncontinuous sequence, using techniques which will adequately measure emission levels and/or ambient air concentrations of air pollutants. (5-1-94)

~~5960.~~ Multiple Chamber Incinerator. Any article, machine, equipment, contrivance, structure or part of a structure used to dispose of combustible refuse by burning, consisting of three (3) or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned. (5-1-94)

601. New Stationary Source or Facility. (5-1-94)

a. Any stationary source or facility, the construction or modification of which is commenced after the original effective date of any applicable provision of this chapter; or (5-1-94)

b. The restart of a nonoperating facility shall be considered a new stationary source or facility if: (5-1-94)

i. The restart involves a modification to the facility; or (5-1-94)

ii. After the facility has been in a nonoperating status for a period of two (2) years, and the Department receives an application for a Permit to Construct in the area affected by the existing nonoperating facility, the Department will, within five (5) working days of receipt of the application notify the nonoperating facility of receipt of the application for a Permit to Construct. Upon receipt of this Departmental notification, the nonoperating facility will comply with the following restart schedule or be considered a new stationary source or facility when it does restart: Within thirty (30) working days after receipt of the Department's notification of the application for a Permit to Construct, the nonoperating facility shall provide the Department with a schedule detailing the restart of the facility. The restart must begin within sixty (60) days of the date the Department receives the restart schedule. (5-1-94)

642. Nonattainment Area. Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as not meeting (or contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant. (5-1-94)

623. Noncondensibles. Gases and vapors from processes that are not condensed at standard temperature and pressure unless otherwise specified. (5-1-94)

634. Odor. The sensation resulting from stimulation of the human sense of smell. (5-1-94)

645. Opacity. A state which renders material partially or wholly impervious to rays of light and causes obstruction of an observer's view, expressed as percent. (5-1-94)

656. Open Burning. The burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through a stack, duct or chimney. (5-1-94)

667. Operating Permit. A permit issued by the Director pursuant to Sections 300 through 387~~6~~ and/or 400 through 461. ~~(5-1-94)~~(11-13-98)T

678. Particulate Matter. Any material, except water in uncombined form, that exists as a liquid or a solid at standard conditions. (5-1-94)

689. Particulate Matter Emissions. All particulate matter emitted to the ambient air as measured by an applicable reference method, or any equivalent or alternative method specified in the Procedures Manual for Air Pollution Control. (7-1-97)

- ~~6970.~~ Permit to Construct. A permit issued by the Director pursuant to Sections 200 through 225~~3~~.
(5-1-94)(11-13-98)T
701. Person. Any individual, association, corporation, firm, partnership or any federal, state or local governmental entity. (5-1-94)
- ~~742.~~ PM-10. All particulate matter in the ambient air with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53. (5-1-94)
- ~~723.~~ PM-10 Emissions. All particulate matter, including ~~condensable~~ condensible particulates, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in the Procedures Manual for Air Pollution Control. (7-1-97)(11-13-98)T
- ~~734.~~ Potential to Emit/Potential Emissions. The maximum capacity of a facility to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the ~~source~~ facility to emit an air pollutant, provided the limitation or its effect on emissions is state or federally enforceable, shall be treated as part of its design. Limitations may include, but are not limited to, air pollution control equipment, restrictions on hours of operation and restrictions on the type or amount of material combusted, stored or processed. This definition does not alter or affect the term "capacity factor" as defined in 42 U.S.C. Sections 7651 through 7651o. (3-23-98)(11-13-98)T
745. Portable Equipment. Equipment which is designed to be dismantled and transported from one (1) job site to another job site. (5-1-94)
- ~~756.~~ PPM (parts per million). Parts of a gaseous contaminant per million parts of gas by volume. (5-1-94)
- ~~767.~~ 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: (5-1-94)
- a. Fire hazard reduction; (5-1-94)
 - b. The control of pests, insects, or diseases; (5-1-94)
 - c. The promotion of range forage improvements; (5-1-94)
 - d. The perpetuation of natural ecosystems; (5-1-94)
 - 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; (5-1-94)
 - f. The preparation of planting and seeding sites for forest regeneration; and (5-1-94)
 - g. Other accepted natural resource management purposes. (5-1-94)
- ~~778.~~ Primary Ambient Air Quality Standard. That ambient air quality which, allowing an adequate margin of safety, is requisite to protect the public health. (5-1-94)
- ~~789.~~ Process or Process Equipment. Any equipment, device or contrivance for changing any materials whatever or for storage or handling of any materials, and all appurtenances thereto, including ducts, stack, etc., the use of which may cause any discharge of an air pollutant into the ambient air but not including that equipment specifically defined as fuel-burning equipment or refuse-burning equipment. (5-1-94)

~~7980.~~ Process Weight. The total weight of all materials introduced into any source operation which may cause any emissions of particulate matter. Process weight includes solid fuels charged, but does not include liquid and gaseous fuels charged or combustion air. Water which occurs naturally in the feed material shall be considered part of the process weight. (5-1-94)

~~801.~~ Process Weight Rate. The rate established as follows: (5-1-94)

a. For continuous or long-run steady-state source operations, the ~~total~~ maximum design process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof; (5-1-94)(11-13-98)T

b. For cyclical or batch source operations, the ~~total~~ maximum design process weight for a period that covers a complete cycle of operation or an integral number of cycles, divided by the hours of actual process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply. (5-1-94)(11-13-98)T

82. Quantifiable. The Department must be able to determine the emissions impact of any SIP trading programs requirement(s) or emission limit(s). (11-13-98)T

~~843.~~ Radionuclide. A type of atom which spontaneously undergoes radioactive decay. (5-1-94)

84. Regulated Air Pollutant. The following air pollutants: (11-13-98)T

a. Nitrogen oxides or any volatile organic compounds. (11-13-98)T

b. Any pollutant for which a national ambient air quality standard has been promulgated. (11-13-98)T

c. Any pollutant that is subject to any standard promulgated under 42 U.S.C. Section 7411. (11-13-98)T

d. Any Class I or II substance subject to a standard promulgated under or established under 42 U.S.C. Sections 7671a(a) or 7671a(b). (11-13-98)T

e. Any air pollutant subject to a standard promulgated under 42 U.S.C. Section 7412 or other requirements established under 42 U.S.C. Section 7412, including 42 U.S.C. Section 7412(g), (j), and (r), including the following: (11-13-98)T

i. Any air pollutant subject to requirements under 42 U.S.C. Section 7412(j). If the EPA fails to promulgate a standard by the date established pursuant to 42 U.S.C. Section 7412(e), any air pollutant for which a subject source would be major shall be considered to be regulated on the date eighteen (18) months after the applicable date established pursuant to 42 U.S.C. Section 7412(e); and (11-13-98)T

ii. Any air pollutant for which the requirements of 42 U.S.C. Section 7412(g)(2) have been met, but only with respect to the individual source subject to 42 U.S.C. Section 7412(g)(2) requirement. (11-13-98)T

f. Any air pollutant listed in Sections 585, 586, or subject to regulation pursuant to Section 161. Unless otherwise listed in Subsections 006.84.a. through 006.84.e., these pollutants do not constitute regulated air pollutants for purposes of Sections 300 through 386 and 526 through 538. (11-13-98)T

85. Replicable. Any SIP procedures for applying emission trading shall be structured so that two (2) independent entities would obtain the same result when determining compliance with the emission trading provisions. (11-13-98)T

~~826.~~ Responsible Official. One (1) of the following: (5-1-94)

a. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either: (5-1-94)

i. The facilities employ more than two hundred fifty (250) persons or have gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 dollars); or (5-1-94)(11-13-98)T

ii. The delegation of authority to such representative is approved in advance by the Department. (5-1-94)

b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively. (5-1-94)

c. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of Section 1223, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA). (5-1-94)(11-13-98)T

d. For Phase II sources: (5-1-94)

i. The designated representative in so far as actions, standards, requirements, or prohibitions under 42 U.S.C. Sections 7651 through 7651o or the regulations promulgated thereunder are concerned; and (5-1-94)

ii. The designated representative for any other purposes under 40 CFR Part 70. (5-1-94)

~~837.~~ Safety Measure. Any shutdown (and related startup) or bypass of ~~control equipment, process equipment or normal~~ processes undertaken to prevent imminent injury or death to employees or severe damage to equipment or property which may cause excess emissions where such measure is not necessitated by negligence or improper maintenance. (3-20-97)(11-13-98)T

848. Salvage Operation. Any source consisting of any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers, or drums, and specifically including automobile graveyards and junkyards. (5-1-94)

859. Scheduled Maintenance. Planned upkeep, repair activities and preventative maintenance on any air pollution control equipment or emissions unit, including process equipment, and including shutdown and startup of such equipment. (3-20-97)

8690. Secondary Ambient Air Quality Standard. That ambient air quality which is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of air pollutants in the ambient air. (5-1-94)

8791. Shutdown. The normal and customary time period required to cease operations of air pollution control equipment or an emissions unit beginning with the initiation of procedures to terminate normal operation and continuing until the termination is completed. (5-1-94)

8892. Significant. A rate of regulated air pollutant emissions that would equal or exceed any of the following: (5-1-94)(11-13-98)T

a. Air pollutant emissions and rate: (5-1-94)

i. Carbon monoxide, one hundred (100) tons per year; (5-1-94)

ii. Nitrogen oxides, forty (40) tons per year; (5-1-94)

- iii. Sulfur dioxide, forty (40) tons per year; (5-1-94)
 - iv. Particulate matter, twenty-five (25) tons per year; (5-1-94)
 - v. Ozone, forty (40) tons per year of volatile organic compounds as a measure of ozone; (5-1-94)
 - vi. Lead, six-tenths (0.6) of a ton per year; (5-1-94)
 - vii. Asbestos, seven-thousandths (0.007) of a ton per year; (5-1-94)
 - viii. Beryllium, four ten-thousandths (0.0004) of a ton per year; (5-1-94)
 - ix. Mercury, one-tenth (0.1) of a ton per year; (5-1-94)
 - x. Vinyl chloride, one (1) ton per year; (5-1-94)
 - xi. Fluorides, three (3) tons per year; (5-1-94)
 - xii. Sulfuric acid mist, seven (7) tons per year; (5-1-94)
 - xiii. Hydrogen sulfide (H₂S), ten (10) tons per year; (5-1-94)
 - xiv. Total reduced sulfur (including H₂S), ten (10) tons per year; (5-1-94)
 - xv. Reduced sulfur compounds (including H₂S), ten (10) tons per year; (5-1-94)
 - xvi. PM-10, fifteen (15) tons per year; (5-1-94)
 - xvii. Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans), thirty-five ten-millionths (0.0000035) tons per year; (5-1-94)
 - xviii. Municipal waste combustor metals (measured as particulate matter), fifteen (15) tons per year; (5-1-94)
 - xix. Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride), forty (40) tons per year; (5-1-94)
 - xx. Municipal solid waste landfill emissions (measured as nonmethane organic compounds), fifty (50) tons per year. (11-13-98)T
 - xxi. Radionuclides, a quantity of emissions, from source categories regulated by 40 CFR Part 61, Subpart H, that have been determined in accordance with 40 CFR Part 61, Appendix D and by Department approved methods, that would cause any member of the public to receive an annual effective dose equivalent of at least one tenth (0.1) mrem per year, if total facility-wide emissions contribute an effective dose equivalent of less than three (3) mrem per year; or any radionuclide emission rate, if total facility-wide radionuclide emissions contribute an effective dose equivalent of greater than or equal to three (3) mrem per year; (5-1-95)
- b. In reference to a net emissions increase or the potential of a source or facility to emit a regulated air pollutant not listed in Subsection 006.92.(a), above and not a toxic air pollutant, any emission rate; or ~~(5-1-94)~~(11-13-98)T
- c. For a major facility or major modification which would be constructed within ten (10) kilometers of a Class I area, the emissions rate which would increase the ambient concentration of an emitted regulated air pollutant in the Class I area by one (1) microgram per cubic meter, twenty-four (24) hour average, or more. ~~(5-1-94)~~(11-13-98)T

~~899~~3. Significant Contribution. Any increase in ambient concentrations which would exceed the following: (5-1-94)

- a. Sulfur dioxide: (5-1-94)
 - i. One (1.0) microgram per cubic meter, annual average; (5-1-94)
 - ii. Five (5) micrograms per cubic meter, twenty-four (24) hour average; (5-1-94)
 - iii. Twenty-five (25) micrograms per cubic meter, three (3) hour average; (5-1-94)
- b. Nitrogen dioxide, one (1.0) microgram per cubic meter, annual average; (5-1-94)
- c. Carbon monoxide: (5-1-94)
 - i. One-half (0.5) milligrams per cubic meter, eight (8) hour average; (5-1-94)
 - ii. Two (2) milligrams per cubic meter, one (1) hour average; (5-1-94)
- d. PM-10: (5-1-94)
 - i. One (1.0) microgram per cubic meter, annual average; (5-1-94)
 - ii. Five (5.0) micrograms per cubic meter, twenty-four (24) hour average. (5-1-94)

~~90~~4. Small Fire. A fire in which the material to be burned is not more than four (4) feet in diameter nor more than three (3) feet high. (5-1-94)

~~94~~5. Smoke. Small gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon and other combustible material. (5-1-94)

~~92~~6. Smoke Management Plan. A document issued by the Director to implement Sections 606 through 616, Categories of Allowable Burning. (5-1-94)

~~93~~7. Smoke Management Program. A program whereby meteorological information, fuel conditions, fire behavior, smoke movement and atmospheric dispersal conditions are used as a basis for scheduling the location, amount and timing of open burning operations so as to minimize the impact of such burning on identified smoke sensitive areas. (5-1-94)

~~94~~8. Source. A stationary source. (5-1-94)

~~95~~9. Source Operation. The last operation preceding the emission of air pollutants, when this operation: (5-1-94)

- a. Results in the separation of the air pollutants from the process materials or in the conversion of the process materials into air pollutants, as in the case of fuel combustion; and (5-1-94)
- b. Is not an air cleaning device. (5-1-94)

~~96~~100. Stack. Any point in a source arranged to conduct emissions to the ambient air, including a chimney, flue, conduit, or duct but not including flares. (5-1-94)

~~97~~101. Standard Conditions. Except as specified in Subsection 576.02 for ambient air quality standards, a dry gas temperature of twenty degrees Celsius (20C) ~~sixty-eight degrees Fahrenheit (68F)~~ and a gas pressure of seven hundred sixty (760) millimeters of mercury (14.7 pounds per square inch) absolute. ~~(5-1-94)~~(11-13-98)T

~~98~~102. Startup. The normal and customary time period required to bring air pollution control equipment or

an emissions unit, including process equipment, from a nonoperational status into normal operation. (5-1-94)

~~99~~103. Stationary Source. Any facility, building, structure, emissions unit, or installation which emits or may emit any air pollutant. ~~(5-1-94)~~(11-13-98)T

1004. Tier I Source. Any of the following: (5-1-94)

a. Any source located at any major facility as defined in Section 008; ~~(5-1-94)~~(11-13-98)T

b. Any source, including an area source, subject to a standard, limitation, or other requirement under 42 U.S.C. Section 7411 or 40 CFR Part 60; (5-1-94)

c. Any source, including an area source, subject to a standard or other requirement under 42 U.S.C. Section 7412, 40 CFR Part 61 or 40 CFR Part 63, except that a source is not required to obtain a permit solely because it is subject to requirements under 42 U.S.C. Section 7412(r); (5-1-94)

d. Any Phase II source; and (5-1-94)

e. Any source in a source category designated by the Department. (5-1-94)

~~101. Time Intervals. Where applicable, time intervals are defined as follows:~~ (5-1-94)

~~a. "Annual" means calendar year;~~ (5-1-94)

~~b. "Year" means calendar year;~~ (5-1-94)

~~c. "Month" means calendar month;~~ (5-1-94)

~~d. "Week" means calendar week;~~ (5-1-94)

~~e. "Twenty four (24) hour concentration" means twenty four (24) hour average concentration starting at midnight and continuing until the following midnight;~~ (5-1-94)

~~f. "Eight (8) hour concentration" means running eight (8) hour average concentration starting at each clock hour;~~ (5-1-94)

~~g. "Three (3) hour concentration" means running three (3) hour average concentration starting at each clock hour; and~~ (5-1-94)

~~h. "One (1) hour concentration" means one (1) hour average concentration starting at each clock hour.~~ (5-1-94)

105. Total Suspended Particulates. Particulate matter as measured by the method described in 40 CFR 50 Appendix B. (11-13-98)T

~~102~~6. Toxic Air Pollutant. An air pollutant that has been determined by the Department to be by its nature, toxic to human or animal life or vegetation and listed in Section 585 or 586. (5-1-94)

~~103~~7. Toxic Air Pollutant Carcinogenic Increments. Those ambient air quality increments based on the probability of developing excess cancers over a seventy (70) year lifetime exposure to one (1) microgram per cubic meter (1 ug/m³) of a given carcinogen and expressed in terms of a screening emission level or an acceptable ambient concentration for a carcinogenic toxic air pollutant. They are listed in Section 586. (5-1-94)

~~104~~8. Toxic Air Pollutant Non-carcinogenic Increments. Those ambient air quality increments based on occupational exposure limits for airborne toxic chemicals expressed in terms of a screening emission level or an acceptable ambient concentration for a non-carcinogenic toxic air pollutant. They are listed in Section 585. (5-1-94)

~~1059.~~ Toxic Substance. Any air pollutant that is determined by the Department to be by its nature, toxic to human or animal life or vegetation. (5-1-94)

~~10610.~~ Trade Waste. Any solid, liquid or gaseous material resulting from the construction or demolition of any structure, or the operation of any business, trade or industry including, but not limited to, wood product industry waste such as sawdust, bark, peelings, chips, shavings and cull wood. (5-1-94)

~~10711.~~ TRS (Total Reduced Sulfur). Hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide and any other organic sulfide present. (5-1-94)

~~10812.~~ Unclassifiable Area. An area which, because of a lack of adequate data, is unable to be classified pursuant to 42 U.S.C. Section 7407(d) as either an attainment or a nonattainment area. (5-1-94)

~~10913.~~ Uncontrolled Emission. An emission which has not been treated by control equipment. (5-1-94)

~~1104.~~ Upset. An unplanned and unforeseeable disruption in the normal operations of any air pollution control equipment or emissions unit, including process equipment, which may cause excess emissions where such disruption is not intentional or the result of negligence or improper maintenance. (5-1-94)(11-13-98)T

~~1145.~~ Wigwam Burner. Wood waste burning devices commonly called teepee burners, silos, truncated cones, and other such burners commonly used by the wood product industry for the disposal by burning of wood wastes. (5-1-94)

~~1127.~~ Wood Stove Curtailment Advisory. An air pollution alert issued through local authorities and/or the Department to limit wood stove emissions during air pollution episodes. (5-1-94)

007. DEFINITIONS FOR THE PURPOSES OF SECTIONS 200 THROUGH 2253 AND 400 THROUGH 461.

~~01.~~ Adverse Effect Impact on Visibility. Impairment of visibility in a Class I area which the Department determines to be unacceptable. This determination is made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and times of visibility impairment, and how these factors correlate with times of visitor use of the area and the frequency and times of naturally occurring phenomena that reduce visibility. Visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with: (5-1-94)(11-13-98)T

a. Times of visitor use of the Federal Class I area; and (11-13-98)T

b. The frequency and timing of natural conditions that reduce visibility. (11-13-98)T

c. This term does not include affects on integral vistas. (11-13-98)T

~~02.~~ Agricultural Activities and Services. For the purposes of Subsection 223.03.f., the usual and customary activities of cultivating the soil, producing crops and raising livestock for use and consumption. Agricultural activities and services do not include manufacturing, bulk storage, handling for resale or the formulation of any agricultural chemical listed in Sections 585 or 586. (5-1-94)

~~03.~~ Allowable Emissions. ~~The emission rate, at maximum rated capacity (unless the operating rate, or hours of operation, or both are restricted by enforceable limits), allowed by current state rules, federal regulations or by permit condition, whichever is most stringent.~~ (5-1-94)

~~043.~~ Innovative Control Technology. Any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice, or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental effects. (5-1-94)

054. Integral Vista. A view perceived from within the mandatory federal Class I area of a specific landmark or panorama located outside the boundary of the mandatory federal Class I area. Integral vistas are identified by the responsible federal land manager in accordance with criteria adopted pursuant to 40 CFR Part 51.304(a). (5-1-94)

065. Mandatory Federal Class I Area. Any area designated under 42 U.S.C. Section 7472(a) as Class I and never to be redesignated. (5-1-94)

076. Net Emissions Increase. Any increase in actual emissions from a particular modification plus any other increases and ~~creditable~~ decreases in actual emissions at the facility that are creditable and contemporaneous with the particular modification, where: (5-1-94)(11-13-98)T

a. A creditable increase or decrease in actual emissions is contemporaneous with a particular modification if it occurs within between the date five (5) years prior to the date that the new or modified emissions unit(s) becomes operational before the commencement of construction or modification on the particular change and the date that the increase from the particular modification occurs, except that creditable decreases may also include emission reduction credits obtained and used in accordance with Sections 460 or 461. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred and eighty (180) days; (3-23-98)(11-13-98)T

b. A decrease in actual emissions is creditable only if it satisfies the requirements for emission reduction credits (Section 460) and has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular modification, and is federally enforceable at and after the time that construction of the modification commences. (5-1-94)(11-13-98)T

c. The increase in toxic air pollutant emissions from an already operating or permitted source is not included in the calculation of the net emissions increase for a proposed new source or modification if: (5-1-95)

i. The already operating or permitted source commenced construction or modification prior to July 1, 1995; or (5-1-95)

ii. The uncontrolled emission rate from the already operating or permitted source is ten per cent (10%) or less of the applicable screening emissions level listed in Section 585 or 586; or (6-30-95)

iii. The already operating or permitted source is an environmental remediation source subject to or regulated by the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901-6992k) and Idaho Rules and Standards for Hazardous Waste (IDAPA 16.01.05.000 et seq.) or the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 6901-6992k) or a consent order. (6-30-95)

087. Pilot Plant. A stationary source located at least one quarter (1/4) mile from any sensitive receptor that functions to test processing, mechanical, or pollution control equipment to determine full-scale feasibility and which does not produce products that are offered for sale except in developmental quantities. (5-1-94)

098. Reasonable Further Progress (RFP). Annual incremental reductions in emissions of the applicable regulated air pollutant as identified in the SIP which are sufficient to provide for attainment of the applicable ambient air quality standard by the required date. (5-1-94)(11-13-98)T

409. Secondary Emissions. Emissions which would occur as a result of the construction, modification, or operation of a stationary source or facility, but do not come from the stationary source or facility itself. Secondary emissions must be specific, well defined, quantifiable, and affect the same general area as the stationary source, facility, or modification which causes the secondary emissions. Secondary emissions include emissions from trains or marine vessels at the stationary source or facility and from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the primary stationary source, facility or modification. Secondary emissions do not include any emissions which come directly from a mobile source regulated under 42 U.S.C. Sections 7521 through 7590. (5-1-94)(11-13-98)T

140. Sensitive Receptor. Any residence, building or location occupied or frequented by persons who, due to age, infirmity or other health based criteria, may be more susceptible to the deleterious effects of a toxic air pollutant than the general population including, but not limited to, elementary and secondary schools, day care centers, playgrounds and parks, hospitals, clinics and nursing homes. (5-1-94)

121. Short Term Source. Any new stationary source or modification to an existing source, with an operational life no greater than five (5) years from the inception of any operations to the cessation of actual operations. (5-1-94)

132. Toxic Air Pollutant Reasonably Available Control Technology (T-RACT). An emission standard based on the lowest emission of toxic air pollutants that a particular source is capable of meeting by the application of control technology that is reasonably available, as determined by the Department, considering technological and economic feasibility. If control technology is not feasible, the emission standard may be based on the application of a design, equipment, work practice or operational requirement, or combination thereof. (5-1-94)

143. Visibility Impairment. Any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under ~~naturally occurring phenomena that reduced visibility~~ natural conditions. (5-1-94)(11-13-98)T

008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 386.

~~01. Accountable. Any SIP emission trading program must account for the aggregate effect of the emissions trades in the demonstration of reasonable further progress, attainment, or maintenance.~~ (5-1-94)

021. Affected States. All states: (5-1-94)

a. Whose air quality may be affected by the emissions of the Tier I source and that are contiguous to Idaho; or (5-1-94)

b. That are within fifty (50) miles of the Tier I source. (5-1-94)

~~03. Air Pollution. The presence in the outdoor atmosphere of any air pollutant or combination thereof in such quantity of such nature and duration and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property.~~ (5-1-94)

042. Allowance. An authorization allocated to a Phase II source by the EPA to emit during or after a specified calendar year, one (1) ton of sulfur dioxide. (5-1-94)

053. Applicable Requirement. All of the following if approved or promulgated by EPA as they apply to emissions units in a Tier I source (including requirements that have been promulgated through rulemaking at the time of permit issuance but which have future-effective compliance dates): (5-1-94)

a. Any standard or other requirement provided for in the applicable state implementation plan, including any revisions to that plan that are specified in 40 CFR Parts 52.670 through 52.690. (5-1-94)

b. Any term or condition of any permits to construct issued by the Department pursuant to Sections 200 through 2253 or by EPA pursuant to 42 U.S.C. Sections 7401 through 7515; provided that terms or conditions relevant only to toxic air pollutants are not applicable requirements. (5-1-94)(11-13-98)T

c. Any standard or other requirement under 42 U.S.C. Section 7411 including 40 CFR Part 60; (5-1-94)

d. Any standard or other requirement under 42 U.S.C. Section 7412 including 40 CFR Part 61 and 40 CFR Part 63; (5-1-94)

e. Any standard or other requirement of the acid rain program under 42 U.S.C. Sections 7651 through

- 7651o; (5-1-94)
- f. Any requirements established pursuant to 42 U.S.C. Section 7414(a)(3), 42 U.S.C. Section 7661c(b) or Sections 120 through 128 of these rules; (3-23-98)
- 7429; g. Any standard or other requirement governing solid waste incineration, under 42 U.S.C. Section (5-1-94)
- h. Any standard or other requirement for consumer and commercial products and tank vessels, under 42 U.S.C. Sections 7511b(e) and (f); and (5-1-94)
- i. Any standard or other requirement under 42 U.S.C. Sections 7671 through 7671q including 40 CFR Part 82. (5-1-94)
- j. Any ambient air quality standard or increment or visibility requirement provided in 42 U.S.C. Sections 7470 through 7492, but only as applied to temporary sources receiving Tier I operating permits under Section 324. (5-1-94)
- ~~064.~~ Designated Representative. A responsible person or official authorized by the owner or operator of a Phase II unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a Phase II unit, and the submission of and compliance with permits, permit applications, and compliance plans for the Phase II unit. (5-1-94)
- ~~075.~~ Draft Permit. The version of a Tier I operating permit that is made available by the Department for public participation and affected State review. (5-1-94)
- ~~086.~~ Emergency. (5-1-94)
- ~~a.~~ For the purposes of Sections ~~326 through 332~~, an emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including ~~natural disasters acts of God~~, which situation requires immediate corrective action to restore normal operation and that causes the Tier I source to exceed a technology-based emission limitation under the Tier I operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. ~~(5-1-94)(11-13-98)T~~
- ~~b.~~ For the purposes of Sections ~~380 through 386~~ an emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including natural disasters, which situation requires immediate corrective action to restore normal operation. ~~(6-15-98)T~~
- ~~09.~~ Emissions Allowable Under the Tier I Operating Permit. A federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emission cap that the facility has assumed to avoid an applicable requirement to which the source would otherwise be subject. (5-1-94)
- ~~10.~~ Excess Emissions. Emissions of an air pollutant in excess of any applicable air quality standard, emission standard emission limit or permit terms or conditions. (5-1-94)
- ~~107.~~ Final Permit. The version of a Tier I permit issued by the Department that has completed all review procedures required in Sections 364 and 366. (5-1-94)
- ~~1208.~~ General Permit. A Tier I permit issued pursuant to Section 335. (3-23-98)
- ~~1309.~~ Insignificant Activity. Those activities that qualify as insignificant in accordance with Section 317. (3-23-98)
- ~~140.~~ Major Facility. A facility (as defined in Section 006) is major if the facility meets any of the

following criteria: (3-23-98)

a. For hazardous air pollutants: (3-23-98)

i. The facility emits or has the potential to emit ten (10) tons per year (tpy) or more of any hazardous air pollutant, other than radionuclides, which has been listed pursuant to 42 U.S.C. Section 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

ii. The facility emits or has the potential to emit twenty-five (25) tpy or more of any combination of any hazardous air pollutants, other than radionuclides, which have been listed pursuant to 42 U.S.C. 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

b. For non-attainment areas: (3-23-98)

i. The facility is located in a "serious" particulate matter (PM-10) nonattainment area and the facility has the potential to emit seventy (70) tpy or more of PM-10. (5-1-94)

ii. The facility is located in a "serious" carbon monoxide nonattainment area in which stationary sources are significant contributors to carbon monoxide levels and the facility has the potential to emit fifty (50) tpy or more of carbon monoxide. (5-1-94)

iii. The facility is located in an ozone transport region established pursuant to 42 U.S.C. Section 7511c and the facility has the potential to emit fifty (50) tpy or more of volatile organic compounds. (5-1-94)

iv. The facility is located in an ozone nonattainment area and, depending upon the classification of the nonattainment area, the facility has the potential to emit the following amounts of volatile organic compounds or oxides of nitrogen; provided that oxides of nitrogen shall not be included if the facility has been identified in accordance with 42 U.S.C. Section 7411a(f)(1) or (2) if the area is "marginal" or "moderate", one hundred (100) tpy or more, if the area is "serious", fifty (50) tpy or more, if the area is "severe", twenty-five (25) tpy or more, and if the area is "extreme", ten (10) tpy or more. (3-23-98)

c. The facility emits or has the potential to emit one hundred (100) tons per year or more of any air pollutant listed in Subsections 006.84.a. through 006.84.e. The fugitive emissions shall not be considered in determining whether the facility is major unless the facility belongs to one (1) of the following categories: ~~(3-23-98)~~(11-13-98)T

i. Designated facilities. (3-23-98)

ii. All other source categories regulated, as of August 7, 1980, by 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63, but only with respect to those air pollutants that have been regulated for that category and only if determined by rule by the Administrator of EPA pursuant to Section 302(j) of the Clean Air Act. ~~(3-23-98)~~(11-13-98)T

~~151.~~ Part 70. Unless specified otherwise in this chapter, all definitions adopted under 40 CFR Part 70, revised as of July 1, 1998, are hereby incorporated by reference. (6-15-98)T

~~162.~~ Permit Revision. Any permit modification, administrative amendment or reopening. (6-15-98)T

~~173.~~ Phase II Source. A source that is subject to emissions reduction requirements of 42 U.S.C. Section 7651 through 7651o and shall have the meaning given to it pursuant to those sections. (5-1-94)

~~184.~~ Phase II Unit. A unit that is subject to emissions reduction requirements of 42 U.S.C. Sections 7651 through 7651o and the term shall have the meaning given to it pursuant to those sections. (5-1-94)

195. Proposed Permit. The version of a permit that the Department proposes to issue and forwards to the EPA for review. (5-1-94)
20. ~~Quantifiable. The Department must be able to determine the emissions impact of any SIP trading programs requirement(s) or emission limit(s).~~ (5-1-94)
21. ~~Regulated Air Pollutant. The following air pollutants:~~ (5-1-94)
- a. ~~Nitrogen oxides including nitrogen dioxide, volatile organic compounds, ozone, lead, carbon monoxide, PM-10 and sulfur oxides.~~ (7-1-97)
- b. ~~Any air pollutant that is regulated in 40 CFR Part 60.~~ (5-1-94)
- c. ~~Any Class I or II substance listed in, or listed in accordance with 42 U.S.C. Sections 7671a(a) or 7671a(b).~~ (5-1-94)
- d. ~~Any air pollutant subject to a standard promulgated under 42 U.S.C. Section 7412 or other requirements established under 42 U.S.C. Section 7412, including 42 U.S.C. Section 7412(g), (j), and (r), including the following:~~ (5-1-94)
- i. ~~Any air pollutant subject to requirements under 42 U.S.C. Section 7412(j). If the EPA fails to promulgate a standard by the date established pursuant to 42 U.S.C. Section 7412(e), any air pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to 42 U.S.C. Section 7412(e); and~~ (5-1-94)
- ii. ~~Any air pollutant for which the requirements of 42 U.S.C. Section 7412(g)(2) have been met, but only with respect to the individual source subject to 42 U.S.C. Section 7412(g)(2) requirement.~~ (5-1-94)
22. ~~Replicable. Any SIP procedures for applying emission trading shall be structured so that two (2) independent entities would obtain the same result when determining compliance with the emission trading provisions.~~ (5-1-94)
2316. Section 502(b)(10) Changes. Changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements. (6-15-98)T
2417. Tier I Operating Permit. Any permit covering a Tier I source that is issued, renewed, amended, or revised pursuant to Sections 300 through 386. (6-15-98)T

(BREAK IN CONTINUITY OF SECTIONS)

107. INCORPORATIONS BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-1-94)
02. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

- a. All federal publications: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 at (202) 783-3238; and (5-1-94)
- b. All documents herein incorporated by reference: (7-1-97)
- i. Central Office, Division of Environmental Quality, Department of Health and Welfare, 1410 N. Hilton, Boise, Idaho 83706 at (208) 373-0502. (7-1-97)
- ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)
03. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (5-1-94)
- a. Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Appendix W to Part 51--Guideline on Air Quality Models. 40 CFR Parts 51 and 52 revised as of July 1, 1997. (4-15-98)T
- b. Implementation Plan for the Control of Air Pollution in the State of Idaho (SIP), Division of Environmental Quality, Department of Health and Welfare, November 1996. (4-15-98)T
- ~~e. Procedures Manual for Air Pollution Control, Idaho Air Quality Bureau, Division of Environment, Department of Health and Welfare, September 1986. (5-1-94)~~
- ~~d. "Ringelmann Smoke Chart," Manual Evaluation of Visible Emissions, Idaho Department of Health and Welfare, Division of Environment, Air Quality Bureau, Sections 6.1-6.10, September 1977. (5-1-94)~~
- ec. National Primary and Secondary Ambient Air Quality Standards, 40 CFR Part 50, revised as of July 1, 1997. (4-15-98)T
- fd. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, Protection of Visibility, Identification of Integral Vistas, Subsection a, 40 CFR Part 51.304(a), revised as of July 1, 1997. (4-15-98)T
- ge. Approval and Promulgation of Implementation Plans, 40 CFR Part 52, revised as of July 1, 1997. (4-15-98)T
- hf. Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR Part 53, revised as of July 1, 1997. (4-15-98)T
- ig. Ambient Air Quality Surveillance, Quality Assurance Requirements for Prevention of Significant Deterioration (PSD Air Monitoring), 40 CFR Part 58, Appendix B, revised as of July 1, 1997. (4-15-98)T
- jh. Standards of Performance for New Stationary Sources, 40 CFR Part 60, revised as of July 1, 1997. (4-15-98)T
- ki. National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, revised as of July 1, 1997. (4-15-98)T
- lj. National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63, revised as of July 1, 1997. (4-15-98)T
- k. Compliance Assurance Monitoring, 40 CFR Part 64, revised as of July 1, 1998. (11-13-98)T
- ml. Permits, 40 CFR Part 72, revised as of July 1, 1997. (4-15-98)T
- nm. Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 1997. (4-15-98)T

- en. Protection of Stratospheric Ozone, 40 CFR Part 82, revised as of July 1, 1997. (4-15-98)T
- po. Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (4-15-98)T
- q. ~~Emergency Episode Air Pollution Criteria, Division of Environmental Quality, Idaho Department of Health and Welfare, April 1972. See Appendix A, shown at the end of this chapter. (3-23-98)~~

(BREAK IN CONTINUITY OF SECTIONS)

122. INFORMATION ORDERS BY THE DEPARTMENT.

The Department may issue information orders as follows: (5-1-94)

- 01. Purpose. For the purpose of: (5-1-94)
 - a. Developing or assisting in the development of any implementation plan, any standard of performance, any emission standard or any rule; (5-1-94)
 - b. Determining whether any person is in violation of any standard of performance, any emission standard, any implementation plan or any rule; or (5-1-94)
 - c. Carrying out any air quality provisions of the Act, any air quality order issued or entered in accordance with the Act or rules, or any of these rules. (5-1-94)
- 02. Persons. The Department may issue an information order to any person who: (5-1-94)
 - a. Owns or operates any emission source; (5-1-94)
 - b. Manufactures emission control equipment; (5-1-94)
 - c. The Department believes may have information necessary to meet the intent of these rules; or (5-1-94)
 - d. Is subject to any requirement of these rules. (5-1-94)
- 03. Requirements. The information order may require the person to perform the following on a one-time, periodic, or continuous basis: (5-1-94)
 - a. Establish, maintain and submit records; (5-1-94)
 - b. Make reports; (5-1-94)
 - c. Install, use, and maintain monitoring equipment, and use audit procedures or methods; (5-1-94)
 - d. Sample emissions in accordance with procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Department shall prescribe; (5-1-94)
 - e. Keep records on control equipment parameters, production variables, or other indirect data when the Department determines that direct monitoring of emissions is impractical; (5-1-94)
 - f. Submit compliance certifications including: (5-1-94)
 - i. Identification of the applicable requirement that is the basis of the certification; (5-1-94)
 - ii. The method(s) or other means used by the owner or operator for determining the compliance status

of the source for each applicable requirement, and whether such methods or other means provide continuous or intermittent data; and (5-1-94)(11-13-98)T

iii. The status of compliance status; with each applicable requirement, based on the method or means designated in Subsection 122.03.f.ii. The certification shall identify each excursion or exceedance and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and (5-1-94)(11-13-98)T

iv. Whether compliance is continuous or intermittent; and (5-1-94)

v. Such other facts as the Department may require. (5-1-94)

g. Provide such other information as the Department may require. (5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

130. STARTUP, SHUTDOWN, SCHEDULED MAINTENANCE, SAFETY MEASURES, UPSET AND BREAKDOWN.

The purpose of Sections 130 through 136 is to establish procedures and requirements for to be implemented in all excess emissions events due to and to establish criteria to be applied by the Department in determining whether to take enforcement action to impose penalties for an excess emissions event where the excess emissions are caused by startup, shutdown, scheduled maintenance, safety measures, upsets and breakdowns upset, or breakdown of any emissions unit or which occur as a direct result of the implementation of any safety measure. (3-20-97)(11-13-98)T

131. EXCESS EMISSIONS.

01. Applicability. Emissions exceeding any of the limits established in this chapter or established in a preconstruction permit or operating permit (Tier I or Tier II), or modification thereof, issued pursuant to this chapter, which emissions occur as a direct result of a startup, shutdown, scheduled maintenance, upset, or breakdown of any air pollution control equipment or emissions unit, including process equipment and processes, or as a direct result of implementation of any safety measure, shall be referred to herein as "excess emissions". Except as provided in Subsection 131.02, excess emissions shall be a violation of the rule or permit establishing such limits. The owner or operator of the a facility or source must emissions unit generating excess emissions shall comply with Sections/ Subsections 131, 132, 133.01, 134.01, 134.02, 134.03, 135, and 136, as applicable. If the owner or operator anticipates requesting consideration under Subsection 131.02, then the owner or operator shall also comply with the applicable provisions of Subsections 133.02, 133.03, 134.04, and 134.05. (3-20-97)(11-13-98)T

02. Excuse of Violation Enforcement Action Criteria. If an excuse of Where an excess emissions event occurs as a direct result of startup, shutdown, or scheduled maintenance, or an unavoidable upset or breakdown, or the implementation of a safety measure, the Department shall consider the sufficiency of the information submitted and the following criteria to determine if an enforcement action to impose penalties is warranted: the excess emissions violation is sought, then the burden shall be on the owner or operator of the facility or source seeking to excuse the excess emissions violation to demonstrate to the satisfaction of the Department that all of the relevant requirements in Sections 132 through 136 have been met and that the excess emissions event is or was reasonably unavoidable and the result of a startup, shutdown, scheduled maintenance, upset, breakdown, or safety measure. Any excuse of violation under this Section shall not excuse the owner or operator from compliance with the emissions limit in the future. This section shall not apply to limits established by EPA and incorporated by reference into Section 107 of this chapter or to any such limits established by EPA which are included in preconstruction or operating permits issued pursuant to this chapter. (3-20-97)(11-13-98)T

a. Whether prior to the excess emissions event, the owner or operator submitted and implemented procedures pursuant to Subsections 133.02 and 133.03 or Subsections 134.04 and 134.05, as applicable; (11-13-98)T

b. Whether the owner or operator complied with all relevant portions of Subsections 131, 132, 133.01, 134.01, 134.02, 134.03, 135, and 136; (11-13-98)T

c. Whether the excess emissions event was part of a recurring pattern of excess emissions events indicative of inadequate design, operation or maintenance of the facility or emissions unit; and (11-13-98)T

d. Where appropriate, whether the excess emissions event was caused by an activity necessary to prevent loss of life, personal injury or severe property damage. (11-13-98)T

03. Effect of Determination. Any decision by the Department under Subsection 131.02 shall not excuse the owner or operator from compliance with the relevant emission standard and shall not preclude the Department from taking an enforcement action to enjoin the activity causing the excess emissions. Any decision made by the Department under Subsection 131.02 shall not preclude the Department from taking an enforcement action for future or other excess emission events. The affirmative defense for emergencies under Section 332 of these Rules may be applied in addition to the provisions of Sections 130 through 136. (11-13-98)T

132. CORRECTION OF CONDITION.

The person responsible for, or in charge of a facility during, an excess emissions event shall, with all practicable speed, initiate and complete appropriate and reasonable action to correct the conditions causing such excess emissions event; to reduce the frequency of occurrence of such events; to minimize the amount by which ~~regulatory or permit limits are the emission standard~~ is exceeded; and shall, as provided below or upon request of the Department, submit a full report of such occurrence, including a statement of all known causes, and of the scheduling and nature of the actions to be taken. (3-20-97)(11-13-98)T

133. STARTUP, SHUTDOWN AND SCHEDULED MAINTENANCE REQUIREMENTS.

The requirements in ~~this Subsection 133.01~~ shall apply in all cases where startup, shutdown, or scheduled maintenance of ~~any air pollution control equipment or an emissions unit, including, process equipment and processes, may be expected to result or results~~ in an excess emissions event. ~~A demonstration of compliance with all of the following requirements, including of Subsection 133.01, as well as the development and implementation of adherence to any procedures developed pursuant to Subsections 133.02, and 133.03, 133.04, and 133.05, shall be as a prerequisite to any excuse of excess emissions violation consideration under Subsection 131.02 for startup, shutdown or scheduled maintenance.~~ The owner or operator of the facility or emissions unit generating the excess emissions shall demonstrate of compliance with all of the following requirements, including of Subsection 133.01, as well as the development and implementation of adherence to any procedures developed pursuant to Subsections 133.02, and 133.03, 133.04, and 133.05, shall be as a prerequisite to any excuse of excess emissions violation consideration under Subsection 131.02 for startup, shutdown or scheduled maintenance. (3-20-97)(11-13-98)T

01. General Provisions. The following shall pertain to all startup, shutdown, and scheduled maintenance activities expected to result or resulting in excess emissions: (3-20-97)(11-13-98)T

a. No scheduled startup, shutdown, or maintenance resulting in excess emissions shall occur during any period in which an Atmospheric Stagnation Advisory and/or a Wood Stove Curtailment Advisory has been declared by the Department within an area designated by the Department as a PM-10 nonattainment area, unless the permittee demonstrates that such is reasonably necessary to facility operations and cannot be reasonably avoided and the Department approves such activity in advance, to the extent advance approval by the Department is feasible. This prohibition on scheduled startup, shutdown or maintenance activities during Advisories does not apply to situations where shutdown is necessitated by urgent situations, such as imminent equipment failure, power curtailment, worker safety concerns or similar situations. (3-20-97)

b. The owner or operator of a source of excess emissions shall notify the Department of any startup, shutdown, or scheduled maintenance event that is expected to cause an excess emissions event. Such notification shall identify the time of the excess emissions, specific location, equipment involved, and type of excess emissions event (i.e. startup, shutdown, or scheduled maintenance). The notification shall be given as soon as reasonably possible, but no later than two (2) hours prior to the start of the excess emissions event unless the owner or operator demonstrates to the Department's satisfaction that a shorter advanced notice was necessary. The Department may prohibit or postpone any scheduled startup, shutdown, or maintenance activity upon consideration of the factors listed in Subsection 134.03. (3-20-97)(11-13-98)T

c. The owner or operator of a source of excess emissions shall report and record the information required pursuant to Sections 135 and 136 for each excess emissions event due to startup, shutdown, or scheduled

maintenance. (3-20-97)

d. ~~No excuse~~ ~~The owner or operator of a source of excess emissions violation under Section 131 may apply to scheduled maintenance on pollution control equipment, except in those cases where~~ must make the maximum reasonable effort, including off-shift labor where required, has been made practicable to accomplish such maintenance during periods of nonoperation of any related source operations or equipment. (3-20-97)(11-13-98)T

02. ~~Effect of Filing Excess Emissions Procedures. The preparation and filing of startup, shutdown, or scheduled maintenance procedures under this Section shall not absolve the owner or operator from an enforcement action by the Department if the procedures are not followed or the burden under Section 131 is not met. Unless otherwise required by these Rules, the failure to establish or file procedures under this Section shall not be a violation of these Rules in and of itself, but shall preclude the excuse of an excess emissions violation under Section 131 for emissions resulting from startup, shutdown, or scheduled maintenance.~~ (3-20-97)

032. ~~Excess Emissions Procedures. For all air pollution control equipment and or emissions units, including process equipment and processes, from which excess emissions may occur during startup, shutdown, or scheduled maintenance, the facility owner or operator shall~~ establish, prepare, implement and file with the Department specific procedures which will be used to minimize excess emissions during such events. Specific information for each of the types of excess emissions events (i.e. startup, shutdown and scheduled maintenance) shall be established or documented for each piece of ~~control equipment and or emissions unit (including, process equipment and processes)~~ and shall include all of the following (which may be based upon the facility owner or operator's knowledge of the process or emissions where measured data is unavailable): (3-20-97)(11-13-98)T

a. Identification of the specific ~~air pollution control~~ equipment or emissions unit and the type of event anticipated. (3-20-97)(11-13-98)T

b. Identification of the specific regulated air pollutants likely to be emitted in excess of applicable emission standards ~~or limits~~ during the startup, shutdown, or scheduled maintenance period. (3-20-97)(11-13-98)T

c. The estimated amount of excess emissions expected to be released during each event. (3-20-97)

d. The expected duration of each excess emissions event. (3-20-97)

e. An explanation of why the excess emissions are reasonably unavoidable for each of the types of excess emissions events (i.e. startup, shutdown, and scheduled maintenance). (3-20-97)

f. Specification of the frequency at which each of the types of excess emissions events (i.e. startup, shutdown, and scheduled maintenance) are expected to occur. (3-20-97)

g. For scheduled maintenance ~~of control equipment,~~ the owner or operator shall also document detailed explanations of: (3-20-97)(11-13-98)T

i. Why the maintenance is needed. (3-20-97)

ii. Why it is impractical to reduce or cease operation of the equipment or emissions unit(s) or other source(s) during the scheduled maintenance period. (3-20-97)(11-13-98)T

iii. Why the excess emissions are not reasonably avoidable through better scheduling of the maintenance or through better operation and maintenance practices. (3-20-97)

iv. Why, where applicable, it is necessary to by-pass, take off line, or operate ~~air pollution control equipment or emissions unit~~ at reduced efficiency while the maintenance is being performed. (3-20-97)(11-13-98)T

h. Justification to explain why the piece of ~~control~~ equipment or emissions unit cannot be modified or redesigned to eliminate or reduce the excess emissions which occur during startup, shutdown, and scheduled maintenance. (3-20-97)(11-13-98)T

i. Detailed specification of the procedures to be followed by the owner or operator which will minimize excess emissions at all times during startup, shutdown, and scheduled maintenance. These procedures may include such measures as preheating or otherwise conditioning the emissions unit prior to its use or the application of auxiliary ~~air pollution control~~ equipment or emissions unit to reduce the excess emissions. (3-20-97)(11-13-98)T

043. Amendments to Procedures. The owner or operator shall amend, and the Department may require amendments to, the procedures established pursuant to Section 133 from time to time and as deemed reasonably necessary to ensure that the procedures are and remain consistent with good pollution control practices. (3-20-97)(11-13-98)T

054. Filing of Excess Emissions Procedures. (11-13-98)T

a. Unless otherwise required by the Department, the failure to prepare or file procedures pursuant to Subsection 133.02 shall not be a violation of these Rules in and of itself. (11-13-98)T

b. To the extent procedures or plans for excess emissions resulting from startup, shutdown, or scheduled maintenance are required to be or are otherwise submitted to the Department with any permit application, such submission, if deemed adequate by the Department, shall fulfill the requirement under this Section to file plans and procedures with the Department. (3-20-97)(11-13-98)T

134. UPSET, BREAKDOWN AND SAFETY REQUIREMENTS.

The requirements in ~~this Subsections 134.01, 134.02, and 134.03~~ shall apply in all cases where upset or breakdown of ~~air pollution control equipment or an emissions unit, including, process equipment and processes,~~ or the initiation of safety measures, ~~result or may result in an excess emissions event. A demonstration~~ The owner or operator of the facility or emissions unit generating the excess emissions shall demonstrate of compliance with all of the following requirements, including adherence to any procedures developed pursuant to requirements of Subsections 134.01, 134.02 and 134.03 as well as the development and implementation of procedures pursuant to Subsections 134.04, and 134.05, and 134.06, shall be as a prerequisite to any excuse of an excess emissions violation under Section 131 for upset, breakdown or safety measures. consideration under Subsection 131.02. Where the owner or operator demonstrates that because of the unforeseeable nature of the excess emissions event it is impractical to develop procedures pursuant to Subsection 134.04, the Department shall exercise its enforcement discretion on a case by case basis. (3-20-97)(11-13-98)T

01. Routine Maintenance and Repairs. For all ~~air pollution control equipment and or emissions units, including process equipment and processes,~~ from which excess emissions may occur during upset conditions or breakdowns or implementation of safety measures, the facility owner or operator shall: (3-20-97)(11-13-98)T

a. Implement routine preventative maintenance and operating procedures consistent with good pollution control practices for minimizing upsets and breakdowns or events requiring implementation of safety measures, and (3-20-97)

b. Make routine repairs in an expeditious fashion when the owner or operator knew or should have known that an excess emissions event was likely to occur. Off-shift labor and overtime shall be utilized, to the extent practicable, to ensure that such repairs are made expeditiously. (3-20-97)

02. Excess Emissions Minimization and Notification. For all ~~air pollution control equipment and or emissions units, including process equipment and processes,~~ from which excess emissions ~~may occur result~~ during upset or breakdown conditions, or for other situations that may necessitate the implementation of safety measures which cause excess emissions, the facility owner or operator shall establish specific procedures which will be used to minimize excess emissions during such events. Specific procedures shall include all of comply with the following: (3-20-97)(11-13-98)T

a. The owner or operator shall immediately undertake all appropriate measures to reduce and, to the extent possible, eliminate excess emissions resulting from the event and to minimize the impact of such excess emissions on the ambient air quality and public health. (3-20-97)(11-13-98)T

b. The owner or operator shall notify the Department of any upset/breakdown/safety event that

resulted in excess emissions. Such notification shall identify the time, specific location, equipment or emissions unit involved, and (to the extent known) the cause(s) of the occurrence. The notification shall be given as soon as reasonably possible, but no later than twenty-four (24) hours after the event, unless the owner or operator demonstrates to the Department's satisfaction that the longer reporting period was necessary. ~~(3-20-97)(11-13-98)T~~

c. The owner or operator shall report and record the information required pursuant to Sections 135 and 136 for each excess emissions event caused by an upset, breakdown, or safety measure. (3-20-97)

03. ~~Discretionary Reduction or Cessation Provisions. During any period of excess emissions due to~~ Discretionary Reduction or Cessation Provisions. During any period of excess emissions ~~caused by upset, or breakdown, or for continued or operation under facility safety measures, the Department may require that the owner or operator to immediately proceed to reduce or cease operation of the equipment or emissions unit(s) or facility, causing the excess emissions until such time as the condition causing the excess emissions has been corrected or brought under control. Such action by the Department will shall be taken upon consideration of the following factors and after consultation with the facility owner or operator:~~ caused by upset, or breakdown, or for continued or operation under facility safety measures, the Department may require that the owner or operator to immediately proceed to reduce or cease operation of the equipment or emissions unit(s) or facility, causing the excess emissions until such time as the condition causing the excess emissions has been corrected or brought under control. Such action by the Department will shall be taken upon consideration of the following factors and after consultation with the facility owner or operator: ~~(3-20-97)(11-13-98)T~~

a. Potential risk to the public or the environment. (3-20-97)

b. Whether ceasing operations could result in physical damage to the equipment, emissions unit or facility, or cause injury to employees. ~~(3-20-97)(11-13-98)T~~

c. ~~If Whether continued excess emissions were determined by the Department to be reasonably avoidable reasonably unavoidable as determined by the Department.~~ If Whether continued excess emissions were determined by the Department to be reasonably avoidable reasonably unavoidable as determined by the Department. ~~(3-20-97)(11-13-98)T~~

d. The effect of the increase in pollution resulting from the shutdown and subsequent restart of the ~~equipment or emission(s) unit or facility.~~ equipment or emission(s) unit or facility. ~~(3-20-97)(11-13-98)T~~

e. The owner or operator shall not be required to reduce or cease operations at the entire facility if reducing or ceasing operations at a portion of the facility ~~terminates eliminates or adequately reduces~~ terminates eliminates or adequately reduces the excess emissions. ~~(3-20-97)(11-13-98)T~~

~~04. Effect of Filing Foreseeable Excess Emissions Procedures. The preparation and filing of procedures pursuant to Subsection 134.05 shall not absolve the owner or operator from an enforcement action by the Department if the procedures are not followed or the burden under Section 131 is not met. Notwithstanding the foregoing, failure to follow procedures filed with the Department shall not preclude the excuse of an excess emissions violation if the owner or operator demonstrates to the Department's satisfaction that alternate and equivalent procedures were used and necessitated by the exigency of the circumstances. Unless otherwise required by these Rules, the failure to establish or file procedures under Subsection 134.05 shall not be a violation of these Rules in and of itself, but shall preclude the excuse of an excess emissions violation under Section 131 for emissions resulting from foreseeable upset/breakdown/safety events.~~ Effect of Filing Foreseeable Excess Emissions Procedures. The preparation and filing of procedures pursuant to Subsection 134.05 shall not absolve the owner or operator from an enforcement action by the Department if the procedures are not followed or the burden under Section 131 is not met. Notwithstanding the foregoing, failure to follow procedures filed with the Department shall not preclude the excuse of an excess emissions violation if the owner or operator demonstrates to the Department's satisfaction that alternate and equivalent procedures were used and necessitated by the exigency of the circumstances. Unless otherwise required by these Rules, the failure to establish or file procedures under Subsection 134.05 shall not be a violation of these Rules in and of itself, but shall preclude the excuse of an excess emissions violation under Section 131 for emissions resulting from foreseeable upset/breakdown/safety events. ~~(3-20-97)~~

054. ~~Foreseeable Excess Emissions Procedures. For equipment or emissions units and process upsets and breakdowns and situations that require implementation of safety measures, which events can reasonably be anticipated to occur periodically but which cannot be reasonably avoided or predicted with certainty, the owner or operator shall establish prepare, implement, and file with the Department specific procedures which will be used to minimize such events and excess emissions during such events. To the extent possible and reasonably practicable (and based upon knowledge of the process or emissions where measured data is not available), specify the following information for each type of anticipated upset/ breakdown/safety event:~~ Foreseeable Excess Emissions Procedures. For equipment or emissions units and process upsets and breakdowns and situations that require implementation of safety measures, which events can reasonably be anticipated to occur periodically but which cannot be reasonably avoided or predicted with certainty, the owner or operator shall establish prepare, implement, and file with the Department specific procedures which will be used to minimize such events and excess emissions during such events. To the extent possible and reasonably practicable (and based upon knowledge of the process or emissions where measured data is not available), specify the following information for each type of anticipated upset/ breakdown/safety event: ~~(3-20-97)(11-13-98)T~~

a. The specific air pollution control equipment or emissions unit and the type of event anticipated. (3-20-97)

b. The specific regulated air pollutants likely to be emitted in excess of applicable emission standards ~~or limits~~ during the event. ~~(3-20-97)(11-13-98)T~~

c. The estimated amount of excess emissions expected to be released during each event. (3-20-97)

d. The expected duration of each excess emissions event. (3-20-97)

- e. An explanation of why the excess emissions are reasonably unavoidable. (3-20-97)
- f. The frequency of the type of event, based on historic occurrences. (3-20-97)
- g. Justification to explain why the piece of control equipment or emissions unit cannot be modified or redesigned to eliminate or reduce the particular type of event. (3-20-97)
- h. Detailed specification of the procedures to be followed by the owner or operator which will minimize excess emissions at all times during such events, including without limitation those procedures listed under Subsection 134.05. (3-20-97)

05. Amendments to Procedures. The owner or operator shall amend, and the Department may require amendments to, the procedures established pursuant to Section 134 from time to time and as deemed reasonably necessary to ensure that the procedures are and remain consistent with good pollution control practices. (11-13-98)T

06. Filing of Excess Emissions Procedures. (11-13-98)T

a. Failure to follow procedures filed with the Department shall not preclude the Department from making a determination under Subsection 131.02 if the owner or operator demonstrates to the Department's satisfaction that alternate and equivalent procedures were used and were necessitated by the exigency of the circumstances. (11-13-98)T

b. Unless otherwise required by the Department, the failure to prepare or file procedures pursuant to Subsection 134.04 shall not be a violation of these Rules in and of itself. (11-13-98)T

c. To the extent procedures or plans for excess emissions resulting from upsets, breakdowns or safety measures are required to be or are otherwise submitted to the Department with any permit application, such submission, if deemed adequate by the Department, shall fulfill the requirement under this Section to file plans and procedures with the Department. (3-20-97)(11-13-98)T

135. EXCESS EMISSIONS REPORTS.

01. Deadline for Excess Emissions Reports. A written report for each excess emissions event shall be submitted to the Department by the owner or operator no later than fifteen (15) days after the beginning of each such event. (3-20-97)

02. Contents of Excess Emissions Reports. Each report shall contain the following information: (3-20-97)

a. The time period during which the excess emissions occurred; (3-20-97)

b. Identification of the specific equipment or emissions unit which caused the excess emissions; (3-20-97)

c. An explanation of the cause, or causes, of the excess emissions and whether the excess emissions occurred as a result of startup, shutdown, scheduled maintenance, upset, breakdown or a safety measure; (3-20-97)

d. An estimate of the quantity of each regulated air pollutant emitted in excess of any applicable emission standard or emission limit (based on knowledge of the process and facility where emissions data is unavailable); (3-20-97)(11-13-98)T

e. A description of the activities carried out to eliminate the excess emissions; and (3-20-97)

~~f. Statements demonstrating~~ Certify compliance status with the requirements of Sections 131, 132, through 133.01, 134.01 through 134.03, 135, and 136, as applicable to the event. (3-20-97)(11-13-98)T

g. If requesting consideration under Subsection 131.02, certify compliance status with Sections 131, 132, 133.01 through 133.03, 134.01 through 134.05, 135, and 136. (11-13-98)T

136. EXCESS EMISSIONS RECORDS.

01. Maintenance of Excess Emissions Records. The owner or operator shall maintain excess emissions records at the facility for the most recent five (5) calendar year period. (3-20-97)

02. Availability of Excess Emissions Records. The excess emissions records shall be made available to the Department upon request. (3-20-97)

03. Contents of Excess Emissions Records. The excess emissions records shall include the following: (3-20-97)

a. An excess emissions log book for each emissions unit or piece of equipment containing copies of all reports that have been submitted to the Department pursuant to Section 135 for the particular emissions unit or equipment; and (3-20-97)(11-13-98)T

b. Copies of all startup, shutdown, and scheduled maintenance procedures and upset/breakdown/safety preventative maintenance plans which have been developed by the owner or operator in accordance with Sections 133 and 134, and facility records as necessary to demonstrate compliance with such procedures and plans. (3-20-97)

04. Protections Under Section 128. The protections under Section 128 for confidential information shall be available for excess emissions reports and records upon proper request of the owner or operator in accordance with Section 128. (3-23-98)

(BREAK IN CONTINUITY OF SECTIONS)

155. CIRCUMVENTION.

No person shall willfully cause or permit the installation or use of any device or use of any means which, without resulting in a reduction in the total amount of regulated air pollutants emitted, conceals an emission of regulated air pollutants which would otherwise violate the provisions of this chapter. (5-1-94)(11-13-98)T

(BREAK IN CONTINUITY OF SECTIONS)

157. ~~SAMPLING AND ANALYTICAL PROCEDURES~~ TEST METHODS AND PROCEDURES.

~~All sampling and analytical procedures shall be as approved by the Department. A procedures manual to be entitled Procedures Manual for Air Pollution Control shall be published and maintained by the Department staff. The procedures manual is available upon request at no charge. The purpose of this Section is to establish procedures and requirements for test methods and results. Unless otherwise specified in these rules, permit, order, consent decree, or prior written approval by the Department:~~ (5-1-94)(11-13-98)T

01. General Requirements. If a source test is performed to satisfy a performance test requirement or a compliance test requirement imposed by state or federal regulation, rule, permit, order or consent decree, then the test methods and procedures shall be conducted in accordance with the requirements of Section 157. (11-13-98)T

a. Prior to conducting any emission test, owners or operators are strongly encouraged to submit to the Department in writing, at least thirty (30) days in advance, the following for approval: (11-13-98)T

i. The type of method to be used; (11-13-98)T

- ii. Any extenuating or unusual circumstances regarding the proposed test; and (11-13-98)T
- iii. The proposed schedule for conducting and reporting the test. (11-13-98)T
- b. Without prior Department approval, any alternative testing is conducted solely at the owner's or operator's risk. If the owner or operator fails to obtain prior written approval by the Department for any testing deviations, the Department may determine the test does not satisfy the testing requirements. (11-13-98)T
02. Test Requirements. Tests shall be conducted in accordance with the following requirements. (11-13-98)T
- a. The test must be conducted under operational conditions specified in the applicable state or federal regulation, rule, permit, order, consent decree or by Department approval. If the operational requirements are not specified, the source should test at worst-case normal operating conditions. Worst-case normal conditions are those conditions of fuel type, and moisture, process material makeup and moisture and process procedures which are changeable or which could reasonably be expected to be encountered during the operation of the facility and which would result in the highest pollutant emissions from the facility. (11-13-98)T
- b. The Department may impose operational limitations or require additional testing in a permit, order or consent decree if the test is conducted under conditions other than worst-case normal. (11-13-98)T
- c. Most EPA test methods approved for the applicable pollutants, source type and operating conditions are found in 40 CFR Parts 51, 60, 61, and 63. EPA modifies these methods from time to time. (11-13-98)T
- d. EPA test methods may allow the owner or operator to make minor changes in the reference method that "have prior approval of the Administrator". The Department will accept those minor changes which have received written approval of the U.S. EPA Administrator so long as the Department determines they are appropriate for the specific application. As stated in Subsection 157.01 above, without prior Department approval, other changes may result in rejection of the test results by the Department. (11-13-98)T
- e. An owner or operator proposing to use an alternative test method must demonstrate to the Department by comparative testing or sufficient analysis, that the alternative method is comparable and equivalent to the EPA reference method. Requests for approval to use an alternative test method shall be submitted to the Department at least thirty (30) days in advance of a scheduled test. Prior approval of an alternative test method by the Department may not satisfy this requirement if new or different information indicates that the alternative test method is less accurate, less reliable, or not comparable with any current state or federal regulation, rule order, permit, or consent decree. (11-13-98)T
- f. Prior approval by the Department may not constitute Department approval for subsequent tests if new or different information indicates that a previously Department approved test method is less accurate, less reliable or not comparable with any current state or federal regulation, rule, order, permit or consent decree. (11-13-98)T
03. Observation of Tests by Department Staff. The owner or operator shall provide notice of intent to test to the Department at least fifteen (15) days prior to the scheduled test, or shorter time period as provided in a permit, order, consent decree or by Department approval. The Department may, at its option, have an observer present at any emissions tests conducted on a source. (11-13-98)T
04. Reporting Requirements. If the source test is performed to satisfy a performance test requirement imposed by state or federal regulation, rule, permit, order, or consent decree, a written report shall be submitted to the Department within thirty (30) days of the completion of the test. The written report shall: (11-13-98)T
- a. Meet the format and content requirements specified by the Department in any applicable rule, regulation, guidance, permit, order, or consent decree. Any deviations from the format and contents specified require prior written approval from the Department. Failure to obtain such approval may result in the rejection of the test results. (11-13-98)T

- b. Include all data required to be noted or recorded in any referenced test method. (11-13-98)T
05. Test Results Review Criteria. The Department will make every effort to, within a reasonable time, the Department may reject tests as invalid for: (11-13-98)T
- a. Failure to adhere to the approved/required method; (11-13-98)T
- b. Using a method inappropriate for the source type or operating conditions; (11-13-98)T
- c. An incomplete written report; (11-13-98)T
- d. Computational or data entry errors; (11-13-98)T
- e. Clearly unreasonable results; (11-13-98)T
- f. Failure to comply with the certification requirements of Section 123 of these rules; or (11-13-98)T
- g. Failure of the source to conform to operational requirements in orders, permits, or consent decrees at the time of the test. (11-13-98)T

(BREAK IN CONTINUITY OF SECTIONS)

160. PROVISIONS GOVERNING SPECIFIC ACTIVITIES AND CONDITIONS.

Sections 160 through 164 establish provisions governing specific activities and conditions. Test methods and procedures shall comply with Section 157. (~~5-1-94~~)(11-13-98)T

(BREAK IN CONTINUITY OF SECTIONS)

200. PROCEDURES AND REQUIREMENTS FOR PERMITS TO CONSTRUCT.

The purposes of Sections 200 through 225~~3~~ is to establish uniform procedures and requirements for the issuance of "Permits to Construct." (~~5-1-94~~)(11-13-98)T

201. PERMIT TO CONSTRUCT REQUIRED.

No owner or operator may commence construction or modification of any stationary source, facility, major facility, or major modification without first obtaining a permit to construct from the Department which satisfies the requirements of Sections 200 through 225~~3~~ unless the source is exempted in any of Sections 220 through 225~~3~~, or the owner or operator complies with Section 213 and obtains the required permit to construct. No permit to construct shall be issued by the Department for any solid waste incineration unit subject to a standard pursuant to 42 U.S.C. 7429 to any Division within the Department. (~~3-23-98~~)(11-13-98)T

202. APPLICATION PROCEDURES.

Application for a permit to construct must be made using forms furnished by the Department, or by other means prescribed by the Department. The application shall be certified by the responsible official in accordance with Section 123 and shall be accompanied by all information necessary to perform any analysis or make any determination required under Sections 200 through 225~~3~~. (~~5-1-94~~)(11-13-98)T

01. Required Information. Depending upon the proposed size and location of the new or modified stationary source or facility, the application for a permit to construct shall include all of the information required by one or more of the following provisions: (5-1-94)

- a. For any new or modified stationary source or facility: (5-1-94)

- i. Site information, plans, descriptions, specifications, and drawings showing the design of the stationary source, facility, or modification, the nature and amount of emissions (including secondary emissions), and the manner in which it will be operated and controlled. (5-1-94)
- ii. A schedule for construction of the stationary source, facility, or modification. (5-1-94)
- b. For any new major facility or major modification in a nonattainment area which would be major for the nonattainment regulated air pollutant(s): ~~(5-1-94)~~(11-13-98)T
- i. A description of the system of continuous emission control proposed for the new major facility or major modification, emission estimates, and other information as necessary to determine that the lowest achievable emission rate would be applied. (5-1-94)
- ii. A description of the emission offsets proposed for the new major facility or major modification, including information on the stationary sources, mobile sources, or facilities providing the offsets, emission estimates, and other information necessary to determine that a net air quality benefit would result. ~~(5-1-94)~~(11-13-98)T
- iii. Certification that all other facilities in Idaho, owned or operated by (or under common ownership of) the proposed new major facility or major modification, are in compliance with all local, state or federal requirements or are on a schedule for compliance with such. (5-1-94)
- iv. An analysis of alternative sites, sizes, production processes, and environmental control techniques which demonstrates that the benefits of the proposed major facility or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. (5-1-94)
- v. An analysis of the impairment to visibility of any federal Class I area, Class I area designated by the Department, or integral vista of any mandatory federal Class I area that the new major facility or major modification would impact (including the monitoring of visibility in any Class I area near the new major facility or major modification, if requested by the Department), except for those new major facilities and major modifications exempted by Subsection 204.04. (5-1-94)
- c. For any new major facility or major modification in an attainment or unclassifiable area for any regulated air pollutant, except for those new major facilities and major modifications exempted under Subsection 205.04. ~~(3-23-98)~~(11-13-98)T
- i. A description of the system of continuous emission control proposed for the new major facility or major modification, emission estimates, and other information as necessary to determine that the best available control technology would be applied. (5-1-94)
- ii. An analysis of the effect on air quality by the new major facility or major modification, including meteorological and topographical data necessary to estimate such effects. (5-1-94)
- iii. An analysis of the effect on air quality projected for the area as a result of general commercial, residential, industrial, and other growth associated with the new major facility or major modification. (5-1-94)
- iv. A description of the nature, extent, and air quality effects of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the new major facility or major modification would affect. (5-1-94)
- v. An analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the new major facility or major modification and general commercial, residential, industrial, and other growth associated with establishment of the new major facility or major modification. The owner or operator need not provide an analysis of the impact on vegetation or soils having no significant commercial or recreational value. (5-1-94)
- vi. An analysis of the impairment to visibility of any federal Class I area, Class I area designated by the Department, or integral vista of any mandatory federal Class I area that the new major facility or major

modification would affect.

(5-1-94)

vii. An analysis of the existing ambient air quality in the area that the new major facility or major modification would affect for each regulated air pollutant that a new major facility would emit in significant amounts or for which a major modification would result in a significant net emissions increase. ~~(5-1-94)~~(11-13-98)T

viii. Ambient analyses as specified in Subsections 202.01c.vii., 202.01c.ix., 202.01c.x., and 202.01c.xii., may not be required if the projected increases in ambient concentrations or existing ambient concentrations of a particular regulated air pollutant in any area that the new major facility or major modification would affect are less than the following amounts, or the regulated air pollutant is not listed herein: carbon monoxide - five hundred and seventy-five (575) micrograms per cubic meter, eight (8) hour average; nitrogen dioxide - fourteen (14) micrograms per cubic meter, annual average; PM-10 - ten (10) micrograms per cubic meter, twenty-four (24) hour average; sulfur dioxide - thirteen (13) micrograms per cubic meter, twenty-four (24) hour average; ozone - any net increase of one hundred (100) tons per year or more of volatile organic compounds, as a measure of ozone; lead - one-tenth (0.1) of a microgram per cubic meter, calendar quarterly average; mercury - twenty-five hundredths (0.25) of a microgram per cubic meter, twenty-four (24) hour average; beryllium - one-thousandth (0.001) of a microgram per cubic meter, twenty-four (24) hour average; fluorides - twenty-five hundredths (0.25) of a microgram per cubic meter, twenty-four (24) hour average; vinyl chloride - fifteen (15) micrograms per cubic meter, twenty-four (24) hour average; hydrogen sulfide - two-tenths (0.2) of a microgram per cubic meter, one (1) hour average. ~~(7-1-97)~~(11-13-98)T

ix. For any regulated air pollutant which has an ambient air quality standard, the analysis shall include continuous air monitoring data, gathered over the year preceding the submittal of the application, unless the Department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year, but not less than four (4) months, which is adequate for determining whether the emissions of that regulated air pollutant would cause or contribute to a violation of the ambient air quality standard or any prevention of significant deterioration (PSD) increment. ~~(5-1-94)~~(11-13-98)T

x. For any regulated air pollutant which does not have an ambient air quality standard, the analysis shall contain such air quality monitoring data that the Department determines is necessary to assess ambient air quality for that air pollutant in any area that the emissions of that air pollutant would affect. ~~(5-1-94)~~(11-13-98)T

xi. If requested by the Department, monitoring of visibility in any Class I area the proposed new major facility or major modification would affect. (5-1-94)

xii. Operation of monitoring stations shall meet the requirements of Appendix B to 40 CFR Part 58 or such other requirements as extensive as those set forth in Appendix B as may be approved by the Department. (5-1-94)

02. Estimates of Ambient Concentrations. All estimates of ambient concentrations shall be based on the applicable air quality models, data bases, and other requirements specified in ~~the U.S. Environmental Protection Agency's "Guideline on Air Quality Models (Revised 2-92)" (EPA 450/2-78-027R, July 1986), including Supplement A and B (July 1987) 40 CFR 51, Appendix W (Guideline on Air Quality Models).~~ ~~(5-1-94)~~(11-13-98)T

a. Where an air quality model specified in the "Guideline on Air Quality Models (~~Revised~~)", ~~including "Supplement A" and "Supplement B"~~ is inappropriate, the model may be modified or another model substituted, subject to written approval of the Administrator of the U.S. Environmental Protection Agency and public comment pursuant to Subsection 209.01.c.; provided that modifications and substitutions of models used for toxic air pollutants will be reviewed by the Department. ~~(5-1-94)~~(11-13-98)T

b. Methods like those outlined in the U.S. Environmental Protection Agency's "Interim Procedures for Evaluating Air Quality Models (Revised)" (September 1984) should be used to determine the comparability of air quality models. (5-1-94)

03. Additional Information. Any additional information, plans, specifications, evidence or documents that the Department may require to make the determinations required under Sections 200 through 225 shall be furnished upon request. (5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

204. PERMIT REQUIREMENTS FOR NEW MAJOR FACILITIES OR MAJOR MODIFICATIONS IN NONATTAINMENT AREAS.

No permit to construct shall be granted for a new major facility or major modification which is proposed for location in a nonattainment area and which would be major for the nonattainment regulated air pollutant(s) unless the applicant shows to the satisfaction of the Department all of the following: ~~(5-1-94)~~(11-13-98)T

01. LAER. The new major facility or major modification would be operated at the lowest achievable emission rate (LAER) for the nonattainment regulated air pollutant, specifically: ~~(5-1-94)~~(11-13-98)T

a. A new major facility would meet the lowest achievable emission rate at each new emissions unit which emits the nonattainment regulated air pollutant; and ~~(5-1-94)~~(11-13-98)T

b. A major modification would meet the lowest achievable emission rate at each new or modified emissions unit which has a net emissions increase of the nonattainment regulated air pollutant. ~~(5-1-94)~~(11-13-98)T

02. Required Offsets. Allowable emissions from the new major facility or major modification are offset by reductions in actual emissions from stationary sources, ~~or facilities, and/or mobile sources~~ in the nonattainment area so as to represent reasonable further progress. All offsetting emission reductions must satisfy the requirements for emission reduction credits (Section 460) and provide for a net air quality benefit which satisfies the requirements of Section 208. If the offsets are provided by other stationary sources or facilities, a permit to construct shall not be issued for the new major facility or major modification until the offsetting reductions are made enforceable through the issuance of operating permits. The new major facility or major modification may not commence operation, and an operating permit for the new major facility or major modification shall not be effective before the date the offsetting reductions are achieved. ~~(5-1-94)~~(11-13-98)T

03. Compliance Status. All other sources in the State owned or operated by the applicant, or by any entity controlling, controlled by or under common control with such person, are in compliance with all applicable emission limitations and standards or subject to an enforceable compliance schedule. (5-1-94)

04. Effect on Visibility. The effect on visibility of any federal Class I area, Class I area designated by the Department, or integral vista of a mandatory federal Class I area, by the new major facility or major modification is consistent with making reasonable progress toward remedying existing and preventing future visibility impairment, except that: (5-1-94)

a. New major facilities, or major modifications to ~~new major facilities, which are not designated facilities and~~ which do not emit or have actual or the potential to emit emissions of less than two-hundred fifty (250) tons per year, or more, of any regulated air pollutant ~~and which are not a designated facility~~ are exempt. ~~(5-1-94)~~(11-13-98)T

b. Any integral vista which the Federal Land Manager has not identified at least six (6) months prior to the submittal of a complete application, or which the Department determines was not identified in accordance with the criteria adopted pursuant to 40 CFR Part 51.304(a), may be exempted by the Department. (5-1-94)

205. PERMIT REQUIREMENTS FOR NEW MAJOR FACILITIES OR MAJOR MODIFICATIONS IN ATTAINMENT OR UNCLASSIFIABLE AREAS.

01. Requirements for Issuance. No permit to construct shall be granted for a new major facility or major modification which is proposed for location in an attainment or unclassifiable area for any regulated air pollutant, unless the applicant shows to the satisfaction of the Department that: ~~(3-23-98)~~(11-13-98)T

a. The new major facility or major modification would use the best available control technology

(BACT): (5-1-94)

i. For each regulated air pollutant for which a new major facility would have ~~significant allowable emissions~~ the potential to emit in excess of the significant rates as defined in Section 006; and ~~(5-1-94)~~(11-13-98)T

ii. At each new or modified emissions unit which has a net emissions increase of each regulated air pollutant for which a major modification has a significant net emissions increase. ~~(5-1-94)~~(11-13-98)T

b. The allowable emission increases from the new major facility or major modification, in conjunction with all other applicable emissions increases or reductions, including secondary emissions, would not: (5-1-94)

i. Cause or significantly contribute to violations of any ambient air quality standard; and (5-1-94)

ii. Cause or contribute to violations of any applicable prevention of significant deterioration (PSD) increment; (5-1-94)

c. The ~~allowable~~ emission increases from the new major facility or major modification would not have an adverse ~~effect~~ impact on the air quality related values, including visibility, of any federal Class I area or Class I area designated by the Department, and any effect on visibility of any integral vista of a mandatory federal Class I area would be consistent with making reasonable progress toward remedying existing and preventing future visibility impairment. However, any integral vista which the Federal Land Manager has not identified at least six (6) months prior to the submittal of a complete application, or which the Department determines was not identified in accordance with the required identification criteria, may be exempted by the Department. ~~(5-1-94)~~(11-13-98)T

02. Phased Construction Projects. For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at least eighteen (18) months prior to commencement of each independent phase of the project. (5-1-94)

03. Innovative Control Technology. If requested by the owner or operator of the new major facility or major modification, the Department may, with the consent of the Governor of any other affected state, approve a system of innovative control technology. (5-1-94)

a. A proposed system of innovative control technology may be approved if: (5-1-94)

i. The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function; (5-1-94)

ii. The owner or operator agrees to achieve a level of continuous emissions control equivalent to that which would have been required for BACT by a date specified by the Department, but not later than four (4) years from the time of start-up or seven (7) years from permit issuance; (5-1-94)

iii. The allowable emissions ~~for~~ from the facility employing the system of innovative control technology satisfy all other applicable requirements; ~~(5-1-94)~~(11-13-98)T

iv. Prior to the date established pursuant to Subsection 205.03.a.ii., the new major facility or major modification would not cause or significantly contribute to any violation of an ambient air quality standard, impact any Class I area, or impact any area where a prevention of significant deterioration (PSD) increment is known to be violated. ~~(5-1-94)~~(11-13-98)T

b. The Department shall withdraw its approval to employ a system of innovative control technology if: (5-1-94)

i. The proposed system fails by the specified date to achieve the required continuous emission control; (5-1-94)

ii. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or (5-1-94)

iii. The Department decides that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety. (5-1-94)

c. If the system of innovative control technology fails to meet the required level of continuous emission control or if approval for the system is withdrawn by the Department, the Department may allow the new major facility or major modification up to three (3) years from the date of withdrawal to meet the requirement for the application of BACT through the use of a demonstrated system of control. (5-1-94)

04. Exemptions. (5-1-94)

a. New major facilities, or major modifications to major facilities, which are not designated facilities and which do not emit or have actual or the potential to emit emissions of less than two hundred fifty (250) tons per year, or more, of any regulated air pollutant and which are not designated facilities are exempt from complying with the conditions of Subsections 205.01.a., 205.01.b.ii., and 205.01.c., for obtaining a permit to construct. ~~(5-1-94)~~(11-13-98)T

b. Temporary emissions (one (1) year or less in duration unless otherwise approved by the Department) from a new major facility or major modification that would not impact a Class I area or area where an applicable prevention of significant deterioration (PSD) increment is known to be violated are exempt from complying with the conditions of Subsections 205.01.b. and 205.01.c. for obtaining a permit to construct. ~~(5-1-94)~~(11-13-98)T

(BREAK IN CONTINUITY OF SECTIONS)

208. DEMONSTRATION OF NET AIR QUALITY BENEFIT.

The demonstration of net air quality benefit shall: (5-1-94)

01. VOCs. For trades involving volatile organic compounds, show that total emissions are reduced for the air basin in which the stationary source or facility is located; (5-1-94)

02. Other Regulated Air Pollutants. For trades involving any other regulated air pollutant, show through appropriate dispersion modeling that the trade will not cause an increase in ambient concentrations at any modeled receptor; ~~(5-1-94)~~(11-13-98)T

03. Mobile Sources. For trades involving mobile sources, show a reduction in the ambient impact of emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for adverse ambient impact where the major facility or major modification would otherwise cause or significantly contribute to a violation of any national ambient air quality standard. (11-13-98)T

209. PROCEDURE FOR ISSUING PERMITS.

01. General Procedures. General procedures for permits to construct. (5-1-94)

a. Within thirty (30) days after receipt of the application for a permit to construct, the Department shall determine whether the application is complete or whether more information must be submitted and shall notify the applicant of its findings in writing. (5-1-94)

b. Within sixty (60) days after the application is determined to be complete the Department shall: (5-1-94)

i. Upon written request of the applicant, provide a draft permit for applicant review. Agency action on the permit under this Section may be delayed if deemed necessary to respond to applicant comments. (11-13-98)T

ii. Notify the applicant in writing of the approval, conditional approval, or denial of the application if an opportunity for public comment is not required pursuant to Subsection 209.01.c. The Department shall set forth reasons for any denial; or (5-1-94)

iii. Issue a proposed approval, proposed conditional approval, or proposed denial. (5-1-94)

c. An opportunity for public comment shall be provided on an application for any new major facility or major modification, any new facility or modification which would cause a significant contribution to existing ambient concentrations or affect any Class I area, any application which uses fluid modeling or a field study to establish a good engineering practice stack height pursuant to Sections 510 through 516, any application which uses an interpollutant trade pursuant to Subsection 210.17, ~~and any other~~ application which the Director determines an opportunity for public comment should be provided, and any application upon which the applicant so requests. (6-30-95)(11-13-98)T

i. The Department's proposed action, together with the information submitted by the applicant and the Department's analysis of the information, shall be made available to the public in at least one (1) location in the region in which the stationary source or facility is to be located. (5-1-94)

ii. The availability of such materials shall be made known by notice published in a newspaper of general circulation in the county(ies) in which the stationary source or facility is to be located. (5-1-94)

iii. A copy of such notice shall be sent to the applicant and to appropriate federal, state and local agencies. (5-1-94)

iv. There shall be a thirty (30) day period after initial publication for comment on the Department's proposed action, such comment to be made in writing to the Department. (5-1-94)

v. After consideration of comments and any additional information submitted during the comment period, and within forty-five (45) days after initial publication of the notice, or notice of public hearing if one is requested under Subsections 209.02.b.iv. or 209.02.a.ii., unless the Director deems that additional time is required to evaluate comments and information received, the Department shall notify the applicant in writing of approval, conditional approval, or denial of the permit. The Department shall set forth the reasons for any denial. (5-1-94)

vi. All comments and additional information received during the comment period, together with the Department's final determination, shall be made available to the public at the same location as the preliminary determination. (5-1-94)

d. A copy of each permit will be sent to the U.S. Environmental Protection Agency. (5-1-94)

02. Additional Procedures for Specified Sources. (5-1-94)

a. For any new major facility or major modification in an attainment or unclassifiable area for any regulated air pollutant, except for those new major facilities and major modifications exempted under Subsection 205.04. (3-23-98)(11-13-98)T

i. The public notice issued pursuant to Subsection 209.01.c.ii. shall indicate the degree of increment consumption that is expected from the new major facility or major modification; and (5-1-94)

ii. The public notice issued pursuant to Subsection 209.01.c.ii. shall indicate the opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality effects of the new major facility or major modification, alternatives to it, the control technology required, and other appropriate considerations. All requests for public hearings during a comment period with an opportunity for a hearing must be requested in writing by interested persons within fourteen (14) days of the publication of the legal notice of the proposed permit to construct or within fourteen (14) days prior to the end of the comment period, whichever is later. (3-23-98)

b. For any new major facility or major modification which would affect a federal Class I area or an

integral vista of a mandatory federal Class I area. (5-1-94)

i. If the Department is notified of the intent to apply for a permit to construct, it shall notify the appropriate Federal Land Manager within thirty (30) days; (5-1-94)

ii. A copy of the permit application and all relevant information, including an analysis of the anticipated effects on visibility in any federal Class I area, shall be sent to the Administrator of the U.S. Environmental Protection Agency and the Federal Land Manager within thirty (30) days of receipt of a complete application and at least sixty (60) days prior to any public hearing on the application; (5-1-94)

iii. Notice of every action related to the consideration of the permit shall be sent to the Administrator of the U.S. Environmental Protection Agency; (5-1-94)

iv. The public notice issued pursuant to Subsection 209.01.c.ii. shall indicate the opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality effect of the new major facility or major modification, alternatives to it, the control technology required, and other appropriate considerations. All requests for public hearings during a comment period with an opportunity for a hearing must be requested in writing by interested persons within fourteen (14) days of the publication of the legal notice of the proposed permit to construct or within fourteen (14) days prior to the end of the comment period, whichever is later. (3-23-98)

v. The notice of public hearing, if required, shall explain any differences between the Department's preliminary determination and any visibility analysis performed by the Federal Land Manager and provided to the Department within thirty (30) days of the notification pursuant to Subsection 209.02.b.ii. (5-1-94)

vi. Upon a sufficient showing by the Federal Land Manager that a proposed new major facility or major modification will have an adverse impact upon the air quality related values (including visibility) of any federal mandatory Class I area, the Director may deny the application notwithstanding the fact that the concentrations of regulated air pollutants would not exceed the maximum allowable increases for a Class I area. ~~(5-1-94)~~(11-13-98)T

03. Establishing a Good Engineering Stack Height. The Department will notify the public of the availability of any fluid model or field study used to establish a good engineering practice stack height and provide an opportunity for a public hearing before issuing a permit or setting an emission standard based thereon. (5-1-94)

04. Revisions of Permits to Construct. The Director may approve a revision of any permit to construct provided the stationary source or facility continues to meet all applicable requirements of Sections 200 through 225-3. Revised permits will be issued pursuant to procedures for issuing permits (Section 209), except that the requirements of Subsections 209.01.c., 209.02.a., and 209.02.b. and 209.04. shall only apply if the permit revision results in an increase in ~~allowable~~ emissions authorized by the permit or if deemed appropriate by the Director. ~~(5-1-94)~~(11-13-98)T

05. Permit to Construct Procedures for Tier I Sources. For Tier I sources that require a permit to construct, the owner or operator shall either: (5-1-94)

a. Submit only the information required by Sections 200 through 219 for a permit to construct, in which case: (3-23-98)

i. A permit to construct or denial will be issued in accordance with Subsections 209.01.a. and 209.01.b. (5-1-94)

ii. The owner or operator may construct the source after permit to construct issuance or in accordance with Subsection 213.02.c. (3-23-98)

iii. The owner or operator may operate the source after permit to construct issuance so long as it does not violate any terms or conditions of the existing Tier I operating permit. (3-23-98)

iv. Unless a different time is prescribed by these rules, the applicable requirements contained in a

permit to construct will be incorporated into the Tier I operating permit during renewal (Section 269). Where an existing Tier I permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation. Tier I sources required to meet the requirements under Section 112(g) of the Clean Air Act (Section 214), or to have a permit under the preconstruction review program approved into the applicable implementation plan under Part C (Section 205) or Part D (Section 204) of Title I of the Clean Air Act, shall file a complete application to obtain a Tier I permit revision within twelve (12) months after commencing operation. (6-15-98)T

v. The application or minor or significant permit modification request shall be processed in accordance with timelines: Section 361 and Subsections 367.02 through 367.05. (6-15-98)T

vi. The final Tier I operating permit action shall ~~supersede~~ incorporate the relevant terms and conditions from the permit to construct; or (3-23-98)(11-13-98)T

b. ~~Submit all information required by Sections 200 through 219 and 300 through 386 for a permit to construct and Sections 300 through 386 a Tier I operating permit, or Tier I operating permit modification, in which case:~~ (6-15-98)T(11-13-98)T

i. Completeness of the application shall be determined within thirty (30) days. (5-1-94)

ii. ~~The Department shall prepare a proposed permit to construct or denial and a draft Tier I operating permit, in accordance with Sections 200 through 219 and a draft Tier I operating permit or Tier I operating permit modification in accordance with Sections 300 through 386, within sixty (60) days.~~ (6-15-98)T(11-13-98)T

iii. The Department shall provide for public comment and affected state review in accordance with Sections 209, 364 and 365 on the proposed permit to construct or denial and draft Tier I operating permit or denial Tier I operating permit modification. (3-23-98)(11-13-98)T

iv. ~~Except as otherwise provided by these rules, the Department shall prepare and issue to the owner or operator a final permit to construct or denial within fifteen (15) days after of the close of the public comment period. The owner or operator may construct the source after permit to construct issuance or in accordance with Subsection 213.02.c. The owner or operator may operate the source after permit to construct issuance so long as it does not violate any terms or conditions of the existing Tier I operating permit.~~ (3-23-98)(11-13-98)T

v. The final permit to construct will be sent to EPA, along with as the proposed Tier I operating permit; or as a or modification. The proposed amendment to the Tier I operating permit, for review or modification shall be sent for review in accordance with Section 366. (3-23-98)(11-13-98)T

vi. ~~The permittee shall request that the permit to construct requirements be incorporated into the Tier I operating permit through an administrative amendment~~ The Tier I operating permit, or Tier I operating permit modification, will be issued in accordance with Section 38467. The owner or operator may operate the source after permit to construct issuance so long as it does not violate any terms or conditions of the existing Tier I operating permit; or (6-15-98)T(11-13-98)T

c. Submit all information required by Sections 200 through 219 for a permit to construct and Sections 300 through 381 for a Tier I operating permit, or Tier I operating permit modification, in which case: (11-13-98)T

i. Completeness of the application shall be determined within thirty (30) days. (11-13-98)T

ii. The Department shall prepare a draft permit to construct or denial in accordance with Sections 200 through 219 and that also meets the requirements of Sections 300 through 381 within sixty (60) days. (11-13-98)T

iii. The Department shall provide for public comment and affected state review in accordance with Sections 209, 364, and 365 on the draft permit to construct or denial. (11-13-98)T

iv. The Department shall prepare and send a proposed permit to construct or denial to EPA for review in accordance with Section 366. EPA review of the proposed permit to construct or denial in accordance with Section

366 can occur concurrently with public comment and affected state review of the draft permit, as provided in Subsection 209.05.c.iii. above, except that if the draft permit or denial is revised in response to public comment or affected state review, the Department must send the revised proposed permit to construct or denial to EPA for review in accordance with Section 366. (11-13-98)T

v. Except as otherwise provided by these rules, the Department shall prepare and issue to the owner or operator a final permit to construct or denial in accordance with Section 367. The owner or operator may construct the source after permit to construct issuance or in accordance with Subsection 213.02.c. (11-13-98)T

vi. The permittee may, at any time after issuance, request that the permit to construct requirements be incorporated into the Tier I operating permit through an administrative amendment in accordance with Section 381. The owner or operator may operate the source or modification upon submittal of the request for an administrative amendment. (11-13-98)T

210. DEMONSTRATION OF PRECONSTRUCTION COMPLIANCE WITH TOXIC STANDARDS.

In accordance with Subsection 203.03, the applicant shall demonstrate preconstruction compliance with Section 161 to the satisfaction of the Department. The accuracy, completeness, execution and results of the demonstration are all subject to review and approval by the Department. (6-30-95)

01. Identification of Toxic Air Pollutants. The applicant may use process knowledge, raw materials inputs, EPA and Department references and commonly available references approved by EPA or the Department to identify the toxic air pollutants emitted by the stationary source or modification. (6-30-95)

02. Quantification of Emission Rates. (6-30-95)

a. The applicant may use standard scientific and engineering principles and practices to estimate the emission rate of any toxic air pollutant at the point(s) of emission. (6-30-95)

i. Screening engineering analyses use unrefined conservative data. (6-30-95)

ii. Refined engineering analyses utilize refined and less conservative data including, but not limited to, emission factors requiring detailed input and actual emissions testing at a comparable emissions unit using EPA or Department approved methods. (6-30-95)

b. The uncontrolled emissions rate of a toxic air pollutant from a source or modification is calculated using the maximum capacity of the source or modification under its physical and operational design without the effect of any physical or operational limitations. (6-30-95)

i. Examples of physical and operational design include but are not limited to: the amount of time equipment operates during batch operations and the quantity of raw materials utilized in a batch process. (6-30-95)

ii. Examples of physical or operational limitations include but are not limited to: shortened hours of operation, use of control equipment, and restrictions on production which are less than design capacity. (6-30-95)

c. The controlled emissions rate of a toxic air pollutant from a source or modification is calculated using the maximum capacity of the source or modification under its physical and operational design with the effect of any physical or operational limitation that has been specifically described in a written and certified submission to the Department. (6-30-95)

d. The T-RACT emissions rate of a toxic air pollutant from a source or modification is calculated using the maximum capacity of the source or modification under its physical and operational design with the effect of: (6-30-95)

i. Any physical or operational limitation other than control equipment that has been specifically described in a written and certified submission to the Department; and (6-30-95)

ii. An emission standard that is T-RACT. (6-30-95)

03. Quantification of Ambient Concentrations. (6-30-95)
- a. The applicant may use the modeling methods provided in Subsection 202.02 to estimate the ambient concentrations at specified receptor sites for any toxic air pollutant emitted from the point(s) of emission. (6-30-95)
- i. For screening modeling, the models use arbitrary meteorological data and predict maximum one (1) hour concentrations for all specified receptor sites. For toxic air pollutants listed in Section 586, multiply the maximum hourly concentration output from the model by a persistence factor of one hundred twenty-five one-thousandths (0.125) to convert the hourly average to an annual average. For toxic air pollutants listed in Section 585, multiply the maximum hourly concentration output from the model by a persistence factor of four tenths (0.4) to convert the hourly concentration to a twenty-four (24) hour average. (6-30-95)
- ii. For refined modeling, the models use site specific information. If actual meteorological data is used and the model predicts annual averages for toxic air pollutants listed in Section 586 and twenty-four (24) hour averages for toxic air pollutants listed in Section 585, persistence factors need not be used. (6-30-95)
- b. The point of compliance is the receptor site that is estimated to have the highest ambient concentration of the toxic air pollutant of all the receptor sites that are located either at or beyond the facility property boundary or at a point of public access; provided that, if the toxic air pollutant is listed in Section 586, the receptor site is not considered to be at a point of public access if the receptor site is located on or within a road, highway or other transportation corridor transecting the facility. (6-30-95)
- c. The uncontrolled ambient concentration of the source or modification is estimated by modeling the uncontrolled emission rate. (6-30-95)
- d. The controlled ambient concentration of the source or modification is estimated by modeling the controlled emission rate. (6-30-95)
- e. The approved net ambient concentration from a modification for a toxic air pollutant at each receptor is calculated by subtracting the estimated decreases in ambient concentrations for all sources contributing an approved creditable decrease at the receptor site from the estimated ambient concentration from the modification at the receptor. (6-30-95)
- f. The approved offset ambient concentration from a source or modification for a toxic air pollutant at each receptor is calculated by subtracting the estimated decreases in ambient concentrations for all sources contributing an approved offset at the receptor from the estimated ambient concentration for the source or modification at the receptor. (6-30-95)
- g. The T-RACT ambient concentration of the source or modification is estimated by using refined modeling and the T-RACT emission rate. (6-30-95)
- h. The approved interpollutant ambient concentration from a source or modification for a toxic air pollutant at each receptor is calculated as follows: (6-30-95)
- i. Step 1: Calculate the estimated decrease in ambient concentrations for each toxic air pollutant from each source contributing an approved interpollutant trade at the receptor by multiplying the approved interpollutant ratio by the overall decrease in the ambient concentration of the toxic air pollutant at the receptor site. (6-30-95)
- ii. Step 2: Calculate the total estimated decrease at the receptor by summing all of the individual estimated decreases calculated in Subsection 210.03.h.i. for that receptor. (6-30-95)
- iii. Step 3: Calculate the approved interpollutant ambient concentration by subtracting the total estimated decrease at the receptor from the estimated ambient concentration for the source or modification at the receptor. (6-30-95)

04. Preconstruction Compliance Demonstration. The applicant may use any of the Department approved standard methods described in Subsections 210.05 through 210.08, and may use any applicable specialized method described in Subsections 210.09 through 210.12 to demonstrate preconstruction compliance for each identified toxic air pollutant. (6-30-95)

05. Uncontrolled Emissions. (6-30-95)

a. Compare the source's or modification's uncontrolled emissions rate for the toxic air pollutant to the applicable screening emission level listed in Sections 585 or 586. (6-30-95)

b. If the source's or modification's uncontrolled emission rate is less than or equal to the applicable screening emission level, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. (6-30-95)

06. Uncontrolled Ambient Concentration. (6-30-95)

a. Compare the source's or modification's uncontrolled ambient concentration at the point of compliance for the toxic air pollutant to the applicable acceptable ambient concentration listed in Sections 585 or 586. (6-30-95)

b. If the source's or modification's uncontrolled ambient concentration at the point of compliance is less than or equal to the applicable acceptable ambient concentration, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. (6-30-95)

07. Controlled Emissions and Uncontrolled Ambient Concentration. (6-30-95)

a. Compare the source's or modification's controlled emissions rate for the toxic air pollutant to the applicable screening emission level listed in Sections 585 or 586 and compare the source's or modification's uncontrolled ambient concentration at the point of compliance for the toxic air pollutant to the applicable acceptable ambient concentration listed in Sections 585 or 586. (6-30-95)

b. If the source's or modification's controlled emission rate is less than or equal to the applicable screening emission level and if the source's or modification's uncontrolled ambient concentration at the point of compliance is less than or equal to the applicable acceptable ambient concentration, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. (6-30-95)

08. Controlled Ambient Concentration. (6-30-95)

a. Compare the source's or modification's controlled ambient concentration at the point of compliance for the toxic air pollutant to the applicable acceptable ambient concentration listed in Sections 585 or 586. (6-30-95)

b. If the source's or modification's controlled ambient concentration at the point of compliance is less than or equal to the applicable acceptable ambient concentration, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. (6-30-95)

c. The Department shall include an emission limit for the toxic air pollutant in the permit to construct that is equal to or, if requested by the applicant, less than the emission rate that was used in the modeling. (6-30-95)

09. Net Emissions. (6-30-95)

a. As provided in ~~Subsection 007-07~~ subsections 007-07 (definition of net emissions increase) and Sections 460 and 461, the owner or operator may net emissions to demonstrate preconstruction compliance. ~~(6-30-95)~~ (11-13-98)T

b. Compare the modification's approved net emissions increase (expressed as an emission rate) for the toxic air pollutant to the applicable screening emission level listed in Sections 585 or 586. (6-30-95)

c. If the modification's approved net emissions increase is less than or equal to the applicable screening emission level, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. (6-30-95)

d. The Department shall include emission limits and other permit terms for the toxic air pollutant in the permit to construct that assure that the facility will be operated in the manner described in the preconstruction compliance demonstration. (6-30-95)

10. Net Ambient Concentration. (6-30-95)

a. As provided in ~~Subsections 007-07~~ (definition of net emission increase) and Sections 460 and 461, the owner or operator may net ambient concentrations to demonstrate preconstruction compliance. ~~(6-30-95)~~(11-13-98)T

b. Compare the modification's approved net ambient concentration at the point of compliance for the toxic air pollutant to the applicable acceptable ambient concentration listed in Sections 585 or 586. (6-30-95)

c. If the modification's approved net ambient concentration at the point of compliance is less than or equal to the applicable acceptable ambient concentration, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. (6-30-95)

d. The Department shall include emission limits and other permit terms for the toxic air pollutant in the permit to construct that assure that the facility will be operated in the manner described in the preconstruction compliance demonstration. (6-30-95)

11. Toxic Air Pollutant Offset Ambient Concentration. (6-30-95)

a. As provided in Sections 206 and 460, the owner or operator may use offsets to demonstrate preconstruction compliance. (6-30-95)

b. Compare the source's or modification's approved offset ambient concentration at the point of compliance for the toxic air pollutant to the applicable acceptable ambient concentration listed in Sections 585 or 586. (6-30-95)

c. If the source's or modification's approved offset ambient concentration at the point of compliance is less than or equal to the applicable acceptable ambient concentration, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. (6-30-95)

d. The Department shall include emission limits and other permit terms for the toxic air pollutant in the permit to construct that assure that the facility will be operated in the manner described in the preconstruction compliance demonstration. (6-30-95)

12. T-RACT Ambient Concentration for Carcinogens. (6-30-95)

a. As provided in Subsections 210.12 and 210.13, the owner or operator may use T-RACT to demonstrate preconstruction compliance for toxic air pollutants listed in Section 586. (6-30-95)

i. This method may be used in conjunction with netting (Subsection 210.09), and offsets (Subsection 210.11). (6-30-95)

ii. This method is not to be used to demonstrate preconstruction compliance for toxic air pollutants listed in Section 585. (6-30-95)

b. Compare the source's or modification's approved T-RACT ambient concentration at the point of compliance for the toxic air pollutant to the amount of the toxic air pollutant that would contribute an ambient air cancer risk probability of less than one to one hundred thousand (1:100,000) (which amount is equivalent to ten (10) times the applicable acceptable ambient concentration listed in Section 586). (6-30-95)

c. If the source's or modification's approved T-RACT ambient concentration at the point of compliance is less than or equal to the amount of the toxic air pollutant that would contribute an ambient air cancer risk probability of less than one to one hundred thousand (1:100,000), no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. (6-30-95)

d. The Department shall include emission limits and other permit terms for the toxic air pollutant in the permit to construct that assure that the facility will be operated in the manner described in the preconstruction compliance demonstration. (6-30-95)

13. T-RACT Determination Processing. (6-30-95)

a. The applicant may submit all information necessary to the demonstration at the time the applicant submits the complete initial application or the applicant may request the Department to review a complete initial application to determine if Subsection 210.12 may be applicable to the source or modification. (6-30-95)

b. Notwithstanding Subsections 209.01.a. and 209.01.b., if the applicant requests the Department to review a complete initial application and Subsection 210.12 is determined to be applicable, the completeness determination for the initial application will be revoked until a supplemental application is submitted and determined complete. When the supplemental application is determined complete, the timeline for agency action shall be reinitiated. (6-30-95)

14. T-RACT Determination. T-RACT shall be determined on a case-by-case basis by the Department as follows: (6-30-95)

a. The applicant shall submit information to the Department identifying and documenting which control technologies or other requirements the applicant believes to be T-RACT. (5-1-94)

b. The Department shall review the information submitted by the applicant and determine whether the applicant has proposed T-RACT. (5-1-94)

c. The technological feasibility of a control technology or other requirements for a particular source shall be determined considering several factors including, but not limited to: (5-1-94)

i. Process and operating procedures, raw materials and physical plant layout. (5-1-94)

ii. The environmental impacts caused by the control technology that cannot be mitigated, including, but not limited to, water pollution and the production of solid wastes. (5-1-94)

iii. The energy requirements of the control technology. (5-1-94)

d. The economic feasibility of a control technology or other requirement, including the costs of necessary mitigation measures, for a particular source shall be determined considering several factors including, but not limited to: (5-1-94)

i. Capital costs. (5-1-94)

ii. Cost effectiveness, which is the annualized cost of the control technology divided by the amount of emission reduction. (5-1-94)

iii. The difference in costs between the particular source and other similar sources, if any, that have implemented emissions reductions. (5-1-94)

e. If the Department determines that the applicant has proposed T-RACT, the Department shall determine which of the options, or combination of options, will result in the lowest emission of toxic air pollutants, develop the emission standards constituting T-RACT and incorporate the emission standards into the permit to construct (5-1-94)

f. If the Department determines that the applicant has not proposed T-RACT, the Department shall disapprove the submittal. If the submittal is disapproved, the applicant may supplement its submittal or demonstrate preconstruction compliance through a different method provided in Section 210. If the applicant does not supplement its submittal or demonstrate preconstruction compliance through a different method provided in Section 210, the Department shall deny the permit. (6-30-95)

15. Short Term Source Factor. For short term sources, the applicant may utilize a short term adjustment factor of ten (10). For a carcinogen, multiply either the applicable acceptable ambient concentration (AACC) or the screening emission rate, but not both, by ten (10), to demonstrate preconstruction compliance. This method may be used for TAPs listed in Section 586 only and may be utilized in conjunction with standard methods for quantification of emission rates (Subsections 210.05 through 210.08). (~~6-30-95~~)(11-13-98)T

16. Environmental Remediation Source. (6-30-95)

a. For Remediation sources subject to or regulated by the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901-6992k) and the Idaho Rules and Standards for Hazardous Waste (IDAPA 16.01.05.000, et seq.) or the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 6901-6992k) or a consent order, if the estimated ambient concentration at the point of impact is greater than the acceptable ambient impacts listed in Sections 585 and 586, Best Available Control Technology shall be applied and operated until the estimated uncontrolled emissions from the remediation source are below the acceptable ambient concentration. (6-30-95)

b. For Remediation sources not subject to or regulated by the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901-6992k) and the Idaho Rules and Standards for Hazardous Waste (IDAPA 16.01.05.000 et seq.) or the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 6901-6992k) or a consent order, shall, for the purposes of these rules, be considered the same as any other new or modified source of toxic air pollution. (6-30-95)

17. Interpollutant Trading Ambient Concentration. (6-30-95)

a. As provided in Subsections 209.01.c., 210.17 through 210.19, the owner or operator may use interpollutant trading to demonstrate preconstruction compliance. This method may be used in conjunction with netting (Subsection 210.10), and offsets (Subsection 210.11) (6-30-95)

b. Compare the source's or modification's approved interpollutant ambient concentration at the point of compliance for the toxic air pollutant emitted by the source or modification to the applicable acceptable ambient concentration listed in Sections 585 or 586. (6-30-95)

c. If the source's or modification's approved interpollutant ambient concentration at the point of compliance is less than or equal to the applicable acceptable ambient concentration listed in Sections 585 or 586, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. (6-30-95)

d. The Department shall include emission limits for all of the toxic air pollutants involved in the trade in the permit to construct. The Department shall also include other permit terms in the permit to construct that assure that the facility will be operated in the manner described in the preconstruction compliance demonstration. (6-30-95)

18. Interpollutant Trading Determination Processing. (6-30-95)

a. The applicant may submit all information necessary to the demonstration at the time the applicant submits the complete initial application or the applicant may request the Department to review a complete initial application to determine if Subsection 210.17 may be applicable to the source or modification. (6-30-95)

b. Notwithstanding Subsections 209.01.a. and 209.01.b., if the applicant requests the Department to review a complete initial application and Subsection 210.17 is determined to be applicable, the completeness determination for the initial application will be revoked until a supplemental application is submitted and determined

complete. When the supplemental application is determined complete, the timeline for agency action shall be reinitiated. (6-30-95)

19. Interpollutant Determination. (6-30-95)

a. The applicant may request an interpollutant trade if the Department determines that: (6-30-95)

i. The facility complies with an emission standard at least as stringent as best available control technology (BACT); and (6-30-95)

ii. The owner or operator has instituted all known and available methods of pollution prevention at the facility to reduce, avoid or eliminate toxic air pollution prior to its generation including, but not limited to, recycling, chemical substitution, and process modification provided that such pollution prevention methods are compatible with each other and the product or service being produced; and (6-30-95)

iii. The owner or operator has taken all available offsets; and (6-30-95)

iv. The owner or operator has identified all geographical areas and populations that may be impacted by the proposed interpollutant trade. (6-30-95)

b. Interpollutant trades shall be approved or denied on a case-by-case basis by the Department. Denials shall be within the discretion of the Department. Approvals shall be granted only if: (6-30-95)

i. The Division of Health approves the interpollutant trade; and (6-30-95)

ii. The Division of Environmental Quality determines that the interpollutant trade will result in a overall benefit to the environment; and (6-30-95)

iii. An EPA approved database or other EPA approved reference provides relative potency factors, or comparable factors, or other data that is sufficient to allow for adequate review and approval of the proposed trade by the Department and the Division of Health is submitted for all of the toxic air pollutants being traded; and (6-30-95)

iv. The reductions occur at the same facility where the proposed source or modification will be constructed; and (6-30-95)

v. The interpollutant trade will not cause an increase in sum of the ambient concentrations of the carcinogenic toxic air pollutants involved in the particular interpollutant trade at any receptor site; and (6-30-95)

vi. The total cancer risk with the interpollutant trade will be less than the total cancer risk without the interpollutant trade; and (6-30-95)

vii. The total non-cancer health risk with the interpollutant trade will be less than the total non-cancer health risk without the interpollutant trade. (6-30-95)

20. NSPS and NESHAP Sources. (6-30-95)

a. If the owner or operator demonstrates that the toxic air pollutant from the source or modification is regulated by the Department at the time of permit issuance under 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63, no further procedures for demonstrating preconstruction compliance will be required under Section 210 for that toxic air pollutant as part of the application process. (6-30-95)

b. If the owner or operator demonstrates that the toxic air pollutant from the source or modification is regulated by the EPA at the time of permit issuance under 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63 and the permit to construct issued by the Department contains adequate provisions implementing the federal standard, no further procedures for demonstrating preconstruction compliance will be required under Section 210 for that toxic air pollutant as part of the application process. (6-30-95)

21. Permit Compliance Demonstration. Additional procedures and requirements to demonstrate and ensure actual and continuing compliance may be required by the Department in the permit to construct. (5-1-94)

22. Interpretation and Implementation of Other Sections. Except as specifically provided in other sections of these rules, the provisions of Section 210 are not to be utilized in the interpretation or implementation of any other section of these rules. (6-30-95)

(BREAK IN CONTINUITY OF SECTIONS)

213. PRE-PERMIT CONSTRUCTION.

This section describes how owners or operators may commence construction or modification of certain stationary sources before obtaining the required permit to construct. (3-23-98)

01. Pre-Permit Construction Eligibility. Pre-permit construction approval is available for non-major sources and non-major modifications and for new sources or modifications proposed in accordance with Subsection 213.01.d. Pre-permit construction is not available for any new source or modification that: uses emissions netting to stay below major source levels; uses optional offsets pursuant to Section 206; or would have an adverse effect ~~impact~~ on the air quality related values of any Class I area. Owners or operators may ask the Department for the ability to commence construction or modification of qualifying sources under Section 213 before receiving the required permit to construct. To obtain the Department's pre-permit construction approval, the owner or operator shall satisfy the following requirements: ~~(3-23-98)~~(11-13-98)T

a. The owner or operator shall apply for a permit to construct in accordance with Subsections 202.01.a., 202.02, and 202.03 of this chapter. (3-23-98)

b. The owner or operator shall consult with Department representatives prior to submitting a pre-permit construction approval application. (3-23-98)

c. The owner or operator shall submit a pre-permit construction approval application which must contain, but not be limited to: a letter requesting the ability to construct before obtaining the required permit to construct, a copy of the notice referenced in Subsection 213.02; proof of eligibility; process description(s); equipment list(s); proposed emission limits and modeled ambient concentrations for all ~~regulated~~ air pollutants ~~subject to regulation under this chapter~~, such that they demonstrate compliance with all applicable air quality rules and regulations. The models shall be conducted in accordance with Subsection 202.02 and with written Department approved protocol and submitted with sufficient detail so that modeling can be duplicated by the Department. ~~(3-23-98)~~(11-13-98)T

d. Owners or operators seeking limitations on a source's potential to emit such that permitted emissions will be either below major source levels or below a significant increase must describe in detail in the pre-permit construction application the proposed restrictions and certify in accordance with Section 123 that they will comply with the restrictions, including any applicable monitoring and reporting requirements. (3-23-98)

02. Permit to Construct Procedures for Pre-Permit Construction. (3-23-98)

a. Within ten (10) days after the submittal of the pre-permit construction approval application, the owner or operator shall hold an informational meeting in at least one (1) location in the region in which the stationary source or facility is to be located. The informational meeting shall be made known by notice published at least ten (10) days before the meeting in a newspaper of general circulation in the county(ies) in which the stationary source or facility is to be located. A copy of such notice shall be included in the application. (3-23-98)

b. Within fifteen (15) days after the receipt of the pre-permit construction approval application, the Department shall notify the owner or operator in writing of pre-permit construction approval or denial. The Department may deny the pre-permit construction approval application for any reason it deems valid. (3-23-98)

c. Upon receipt of the pre-permit construction approval letter issued by the Department, the owner or operator may begin construction at their own risk as identified in Subsection 231.02.d. Upon issuance of the pre-permit construction approval letter, any and all potential to emit limitations addressed in the pre-permit construction application pursuant to Subsection 213.01.d. shall become enforceable. The owner or operator shall not operate those emissions units subject to permit to construct requirements in accordance with Section 200 unless and until issued a permit pursuant to Section 209. (3-23-98)

d. If the pre-permit construction approval application is determined incomplete or the permit to construct is denied, the Department shall issue an incompleteness or denial letter pursuant to Section 209. If the Department denies the permit to construct, then the owner or operator shall have violated Section 201 on the date it commenced construction as defined in Section 006. The owner or operator shall not contest the final permit to construct decision based on the fact that they have already begun construction. (3-23-98)

(BREAK IN CONTINUITY OF SECTIONS)

220. GENERAL EXEMPTION CRITERIA FOR PERMIT TO CONSTRUCT EXEMPTIONS.

01. General Exemption Criteria. Sections 220 through 223 may be used by owners or operators to exempt certain sources from the requirement to obtain a permit to construct. Nothing in these sections shall preclude an owner or operator from choosing to obtain a permit to construct. For purposes of Sections 220 through 223, the term source means the equipment or activity being exempted. No permit to construct is required for a source that satisfies all of the following criteria, in addition to the criteria set forth at Sections 221, 222, or 223: (11-13-98)T

a. Less than one hundred (100) tons. Uncontrolled potential emissions of the source shall not exceed one hundred (100) tons per year of any regulated air pollutant. (11-13-98)T

b. No significant increases. Uncontrolled potential emissions of the source shall not cause an increase in the emissions of a major facility that exceeds the significant emissions rates set out in the definition of significant at Section 006. (11-13-98)T

c. Compliance with NAAQS. Uncontrolled potential emissions of the source shall not cause or significantly contribute to a violation of an ambient air quality standard, based upon the applicable air quality models, data bases, and other requirements of 40 CFR Part 51, Appendix W (Guideline on Air Quality Models). No further demonstration is required for those sources listed at Subsection 222.02. (11-13-98)T

d. Combination. The source shall not be part of a proposed new major facility or part of a proposed major modification. (11-13-98)T

02. Record Retention. Unless the source is subject to and the owner or operator complies with Section 385, the owner or operator of the source, except for those sources listed in Subsections 222.02.a. through 222.02.g., shall maintain documentation on site which shall identify the exemption determined to apply to the source and verify that the source qualifies for the identified exemption. The records and documentation shall be kept for a period of time not less than five (5) years from the date the exemption determination has been made or for the life of the source for which the exemption has been determined to apply, which ever is greater, or until such time as a permit to construct or an operating permit is issued which covers the operation of the source. The owner or operator shall submit the documentation to the Department upon request. (11-13-98)T

2201. CATEGORY I EXEMPTION.

No permit to construct is required for Category I sources. Category I sources must comply with all of the following requirements: a source that satisfies the criteria set forth in Section 220 and the following: (5-1-94)(11-13-98)T

01. Less Than One Hundred (100) Tons. Have actual and potential emissions of less than one hundred (100) tons per year of any air pollutant. Below Regulatory Concern. The source shall have controlled actual emissions that are less than ten percent (10%) of the significant emission rates set out in the definition of significant at Section

006. (5-1-94)(11-13-98)T

02. ~~Significant Increases. Not significantly increase the emissions of a major facility. Radionuclides. The source shall have uncontrolled potential emissions that are less than one percent (1%) of the applicable radionuclides standard in 40 CFR Part 61, Subpart H.~~ (5-1-94)(11-13-98)T

03. ~~NAAQS. As demonstrated using Department approved methods, not cause or significantly contribute to a violation of an ambient air quality standard.~~ (5-1-94)

04. ~~BRC. Have emissions that are less than ten percent (10%) of the emission rates specified in Section 006.88.a-~~ (3-20-97)

05. ~~Toxic Air Pollutants. Qualify under and~~ The source shall comply with Section 225. (6-30-95)(11-13-98)T

06. ~~Radionuclides. Not be regulated by any radionuclide standard in 40 CFR Part 61 or 40 CFR Part 63.~~ (5-1-94)

224.2. CATEGORY II EXEMPTION.

No permit to construct is required for ~~Category II sources; provided however that the owner or operator of the Category II source shall maintain documentation on site verifying that the source is a Category II source and submit the documentation to the Department immediately upon request. Category II sources must comply with all of the following requirements~~ the following sources. (5-1-94)(11-13-98)T

01. ~~Less Than One Hundred (100) Tons. Have actual and potential emissions of less than one hundred (100) tons per year of any air pollutant. Exempt Source. A source that satisfies the criteria set forth in Section 220 and that is specified below:~~ (5-1-94)(11-13-98)T

02. ~~Significant Increase. Not significantly increase the emissions of a major facility.~~ (5-1-94)

03. ~~NAAQS. As demonstrated using department approved methods, not cause or significantly contribute to a violation of an ambient air quality standard.~~ (5-1-94)

04. ~~Specified Sources. Be any of the below listed sources:~~ (5-1-94)

a. Laboratory equipment used exclusively for chemical and physical analyses, research or education, including, but not limited to, ventilating and exhaust systems for laboratory hoods. To qualify for this exemption, the source shall: (5-1-94)

i. ~~Qualify under and e~~Comply with Section 225. (6-30-95)(11-13-98)T

ii. ~~Not be regulated by any radionuclide standard~~ Have uncontrolled potential emissions that are less than one percent (1%) of the applicable radionuclides standard in 40 CFR Part 61 or , Subpart H. (5-1-94)(11-13-98)T

b. Environmental characterization activities including emplacement and operation of field instruments, drilling of sampling and monitoring wells, sampling activities, and any other environmental characterization activities specifically exempted by the Director. (5-1-94)(11-13-98)T

c. Stationary internal combustion engines of less than or equal to six hundred (600) horsepower and which are fueled by natural gas, propane gas, liquefied petroleum gas, distillate fuel oils, residual fuel oils, and diesel fuel; waste oil, gasoline, or refined gasoline shall not be used. To qualify for this exemption, the source must be operated in accordance with the following: (5-1-94)

i. One hundred (100) horsepower or less -- unlimited hours of operation. (5-1-94)

- ii. One hundred one (101) to two hundred (200) horsepower -- less than four hundred fifty (450) hours per month. (5-1-94)
- iii. Two hundred one (201) to four hundred (400) horsepower -- less than two hundred twenty-five (225) hours per month. (5-1-94)
- iv. Four hundred one (401) to six hundred (600) horsepower -- less than one hundred fifty (150) hours per month. (5-1-94)
- d. Stationary internal combustion engines used exclusively for emergency ~~power generation~~ purposes which are operated less than two hundred (200) hours per year and are fueled by natural gas, propane gas, liquefied petroleum gas, distillate fuel oils, residual fuel oils, and diesel fuel; waste oil, gasoline, or refined gasoline shall not be used. (5-1-94)(11-13-98)T

222. CATEGORY III EXEMPTION:

~~No permit to construct is required for Category III sources; provided however that the owner or operator of the Category III source shall maintain documentation on-site verifying that the source is a Category III source and submit the documentation to the Department immediately upon request; provided further that this exemption shall terminate one (1) year after the inception of any operations and shall not be renewed. Category III sources must comply with all of the following requirements.~~ (5-1-94)

~~01. Less Than One Hundred (100) Tons. Have actual and potential emissions of less than one hundred (100) tons per year of any air pollutant.~~ (5-1-94)

~~02. Significant Increase. Not significantly increase the emissions of a major facility; and~~ (5-1-94)

~~03. NAAQS. As demonstrated using department approved methods, not cause or significantly contribute to a violation of an ambient air quality standard.~~ (5-1-94)

~~04e. Pilot Plants. Be a Δ pilot plant which that uses a slip stream from an existing process stream not to exceed ten percent (10%) of that existing process stream or which complies with all of satisfies the following requirements.~~ (5-1-94)(11-13-98)T

~~aj. Not have a potential to emit emissions which are significant as defined in Subsection 006.88. The source shall comply with Section 223. For carcinogen emissions, the owner or operator may utilize a short term adjustment factor of ten (10) by multiplying either the acceptable ambient concentration or the screening emissions level, but not both, by ten (10).~~ (3-20-97)(11-13-98)T

~~bii. Qualify under and comply with Section 225. The owner or operator may utilize a short term adjustment factor of ten (10) by multiplying either the acceptable ambient concentration or the screening emissions level, but not both, by 10. The source shall have uncontrolled potential emissions that are less than one percent (1%) of the applicable radionuclides standard in 40 CFR Part 61, Subpart H.~~ (6-30-95)(11-13-98)T

~~eiii. Not be regulated by any radionuclide standard in 40 CFR Part 61 or 40 CFR Part 63. The exemption for a pilot plant shall terminate one (1) year after the commencement of operations and shall not be renewed.~~ (5-1-94)(11-13-98)T

~~f. Any other source specifically exempted by the Department. A list of those sources unconditionally exempted by the Department will be maintained by the Department and made available upon written request.~~ (11-13-98)T

223. CATEGORY IV EXEMPTION:

~~No permit to construct is required for Category IV sources. Category IV sources must comply with all of the following requirements.~~ (5-1-94)

~~01. Less Than One Hundred (100) Tons. Have actual and potential emissions of less than one hundred (100) tons per year of any air pollutant.~~ (5-1-94)

02. ~~Significant Increase. Not significantly increase the emissions of a major facility. Other Exempt Sources.~~ A source that satisfies the criteria set forth in Section 220 and that is specified below: ~~(5-1-94)(11-13-98)T~~

03. ~~Specified Sources. Be any of the below listed sources:-~~ (5-1-94)

a. Air conditioning or ventilating equipment not designed to remove air pollutants generated by or released from equipment. (5-1-94)

b. Air pollutant detectors or recorders, combustion controllers, or combustion shutoffs. (5-1-94)

c. Fuel burning equipment for indirect heating and for heating and reheating furnaces using natural gas, propane gas, liquefied petroleum gas exclusively with a capacity of less than fifty (50) million btu's per hour input. (5-1-94)

d. Other fuel burning equipment for indirect heating with a capacity of less than one million (1,000,000) btu's per hour input. (5-1-94)

e. Mobile internal combustion engines, marine installations and locomotives. (5-1-94)

f. Agricultural activities and services. (5-1-94)

g. Retail gasoline, natural gas, propane gas, liquefied petroleum gas, distillate fuel oils and diesel fuel sales. (5-1-94)

h. Used Oil Fired Space Heaters which comply with all the following requirements: (7-1-97)

i. The used oil fired space heater burns only used oil that the owner or operator generates on site, that is derived from households, such as used oil generated by individuals maintaining their personal vehicles, or on-specification used oil that is derived from commercial generators provided that the generator, transporter and owner or operator burning the oil for energy recovery comply fully with IDAPA 16.01.05.015, "Rules and Standards for Hazardous Waste"; (7-1-97)

(1) For the purposes of Subsection 2232.032.h., "used oil" refers to any oil that has been refined from crude oil or any synthetic oil that has been used and, as a result of such use, is contaminated by physical or chemical impurities. ~~(7-1-97)(11-13-98)T~~

(2) For the purposes of Subsection 2232.032.h., "used oil fired space heater" refers to any furnace or apparatus and all appurtenances thereto, designed, constructed and used for combusting used oil for energy recovery to directly heat an enclosed space. ~~(7-1-97)(11-13-98)T~~

ii. Any used oil burned is not contaminated by added toxic substances such as solvents, antifreeze or other household and industrial chemicals; (7-1-97)

iii. The used oil fired space heater is designed to have a maximum capacity of not more than one half (0.5) million BTU per hour; ~~(7-1-97)(11-13-98)T~~

iv. The combustion gases from the used oil fired space heater are vented to the ambient air through a stack equivalent to the type and design specified by the manufacturer of the heater and installed to minimize down wash and maximize dispersion; and (7-1-97)

v. The used oil fired space heater is of modern commercial design and manufacture, except that a homemade used oil fired space heater may be used if, prior to the operation of the homemade unit, the owner or operator submits documentation to the Department demonstrating, to the satisfaction of the Department, that emissions from the homemade unit are no greater than those from modern commercially available units. (7-1-97)

i. ~~Any other source specifically exempted by the Department. A list of those sources unconditionally~~

exempted by the Department will be maintained by the Department and made available upon written request.

(5-1-94)

224. ~~CATEGORY V EXEMPTION.~~

~~No permit to construct is required for modifications that are fully authorized as an alternative operating scenario or trading scenario in an effective Tier I operating permit.~~

(5-1-94)

225.3. EXEMPTION CRITERIA, ~~RECORDKEEPING~~ AND REPORTING REQUIREMENTS FOR TOXIC AIR POLLUTANT EMISSIONS.

~~The following provisions are the permit to construct~~ No permit to construct for toxic air pollutants is required for a source that satisfies the exemption criteria, the recordkeeping requirements at Subsection 220.02, and reporting requirements for toxic air pollutants: as follows:

(6-30-95)(11-13-98)T

01. Below Regulatory Concern (BRC) Exemption. The source or modification is below regulatory concern for toxic air pollutants if the source's or modification's uncontrolled emission rate (refer to Subsection 210.02.b.) for all toxic air pollutants is less than or equal to ten percent (10%) of all applicable screening emission levels listed in Sections 585 and 586. Notwithstanding any recordkeeping requirements in Sections 220 through 224, the owner or operator is advised, but not required, to maintain documentation on site that states which exemption has been determined to apply to the source or modification and that verifies that the source or modification qualifies for the identified exemption. It is further advised that retention of any documentation be in compliance with the requirements of Subsection 225.06 qualifies for a BRC exemption if the uncontrolled emission rate (refer to Section 210) for all toxic air pollutants emitted by the source is less than or equal to ten percent (10%) of all applicable screening emission levels listed in Sections 585 and 586.

(6-30-95)(11-13-98)T

02. Level I Exemption. To obtain a Level I exemption, the source shall satisfy the following criteria:

(6-30-95)(11-13-98)T

a. The source or modification is level I for toxic air pollutants if the source's or modification's:

(6-30-95)

ia. The Uncontrolled emission rate (refer to ~~Subsection 210.02.e.~~) for all toxic air pollutants is shall be less than or equal to all applicable screening emission levels listed in Sections 585 and 586; or

(6-30-95)(11-13-98)T

ib. The Uncontrolled ambient concentration (refer to ~~Subsection 210.03.e.~~) for all toxic air pollutants at the point of compliance is shall be less than or equal to all applicable acceptable ambient concentrations listed in Sections 585 and 586.

(6-30-95)(11-13-98)T

b. ~~Notwithstanding any recordkeeping requirements in Sections 220 through 224, the owner or operator of the level I source or modification shall:~~

(6-30-95)

i. ~~Maintain certified documentation on site that states which exemption has been determined to apply to the source or modification and that verifies that the source or modification qualifies for the identified exemption in compliance with the requirements of Subsection 225.06; and~~

(6-30-95)

ii. ~~Submit the documentation to the Department immediately upon request; and~~

(6-30-95)

iii. ~~Submit a certified report to the Department as provided in Subsection 225.05.~~

(6-30-95)

03. Level II Exemption. To obtain a Level II exemption, the source shall satisfy the following criteria:

(6-30-95)(11-13-98)T

a. The source or modification is level II for toxic air pollutants if:

(6-30-95)

ia. ~~The source's or modification's~~ The uncontrolled ambient concentration at the point of compliance (refer to ~~Subsection 210.03.e.~~) for all toxic air pollutants ~~at the point of compliance is emitted by the source shall be~~ less than or equal to all applicable acceptable ambient concentrations listed in Sections 585 and 586; and

(6-30-95)(11-13-98)T

~~ii.b.~~ If ~~T~~the owner or operator installs and operates control equipment that is not otherwise required to qualify for an exemption and the ~~source's or modification's~~ controlled emission rate (refer to ~~Subsection 210.03.d.)~~ of the source for all toxic air pollutants is less than or equal to ten percent (10%) of all applicable screening emission levels listed in Sections 585 and 586. (6-30-95)(11-13-98)T

~~b.~~ Notwithstanding any recordkeeping requirements in Sections 220 through 224, the owner or operator of the level II source or modification shall: (6-30-95)

~~i.~~ Maintain certified documentation on-site that states which exemption has been determined to apply to the source or modification and that verifies that the source or modification qualifies for the identified exemption in compliance with the requirements of Subsection 225.06; and (6-30-95)

~~ii.~~ Submit the documentation to the Department immediately upon request; and (6-30-95)

~~iii.~~ Submit a certified annual report to the Department as provided in Subsection 225.05. (6-30-95)

04. Level III Exemption. To obtain a Level III exemption, the source shall satisfy the following criteria: (6-30-95)(11-13-98)T

~~a.~~ The source or modification is level III for toxic air pollutants if the source's or modification's: (6-30-95)

~~ia.~~ The Uncontrolled ambient concentration at the point of compliance (refer to ~~Subsection 210.03.e.)~~ for all toxic air pollutants at the point of compliance is emitted by the source shall be less than or equal to all applicable acceptable ambient concentrations listed in Sections 585 and 586; and (6-30-95)(11-13-98)T

~~ii.b.~~ The Controlled emission rate (refer to ~~Subsection 210.03.d.)~~ for all toxic air pollutants is emitted by the source shall be less than or equal to all applicable screening emission levels listed in Sections 585 and 586. (6-30-95)(11-13-98)T

~~b.~~ Notwithstanding any recordkeeping requirements in Sections 220 through 224, the owner or operator of the level III source or modification shall: (6-30-95)

~~i.~~ Maintain certified documentation on-site that states which exemption has been determined to apply to the source or modification and that verifies that the source or modification qualifies for the identified exemption in compliance with the requirements of Subsection 225.06; and (6-30-95)

~~ii.~~ Submit the documentation to the Department immediately upon request; and (6-30-95)

~~iii.~~ Submit a certified report to the Department as provided in Subsection 225.05. (6-30-95)

05. Reporting Requirements Annual Report for Toxic Air Pollutant Exemption. Commencing on May 1, 1996, and annually thereafter, the owner or operator of a source claiming a Level I, II, or III exemption shall submit ~~an annual~~ a certified report for the previous calendar year to the Department for each Level I, II, or III exemption determination. The report shall be labeled "Toxic Air Pollutant Exemption Report" and shall state the date construction has or will commence and shall include copies of all exemption determinations ~~done~~ completed by the owner or operator for each Levels I, II, and III exemptions. (6-30-95)(11-13-98)T

06. Record Retention. All records and documentation of BRC, Level I, Level II, and Level III exemption determinations shall be kept on site and shall state which exemption has been determined to apply to the source or modification and verify that the source or modification qualifies for the identified exemption. The records and documentation shall be kept for a period of time not less than five (5) years from the date the exemption determination has been made or for the life of the source or modification for which the exemption has been determined to apply, whichever is greater. (6-30-95)

~~2264.~~ -- 299. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

313. TIMELY APPLICATION.

01. Original Tier I Operating Permits. (5-1-94)
- a. For Tier I sources existing on May 1, 1994, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit by no later than June 1, 1996, or within twelve (12) months of EPA approval of the Tier I operating program, whichever is earlier, unless: (3-20-97)
- i. The Department provides written notification of an earlier date to the owner or operator. (5-1-94)
- ii. The Tier I source is identified in Subsections 301.02.b. or 301.02.c. (5-1-94)
- b. For sources that become Tier I sources after May 1, 1994, that are located at a facility not previously authorized by a Tier I operating permit, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit within twelve (12) months after becoming a Tier I source or commencing operation, unless: (3-23-98)
- i. The Department provides written notification of an earlier date to the owner or operator. (5-1-94)
- ii. The Tier I source is identified in Subsections 301.02.b. or 301.02.c. (5-1-94)
- c. For initial phase II acid rain sources identified in Subsections 301.02.b.i. or 301.02.b.ii., the owner or operator of the initial Phase II acid rain source shall submit to the Department a complete application for an original Tier I operating permit by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides. (3-23-98)
- d. For Tier I sources identified in Subsection 301.02.b.iii.:
- i. Existing on July 1, 1998, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit by no later than January 1, 1999, unless the Department provides written notification of an earlier date to the owner or operator. (3-23-98)
- ii. That become Tier I sources after July 1, 1998, located at a facility not previously authorized by a Tier I operating permit, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit within twelve (12) months after becoming a Tier I source or commencing operation, unless the Department provides written notification of an earlier date to the owner or operator. (3-23-98)
- e. For Tier I sources identified in Subsection 301.02.b.iv.:
- i. Existing on January 1, 2000, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit by no later than June 1, 2000, unless the Department provides written notification of an earlier date to the owner or operator. (3-23-98)
- ii. That become Tier I sources after January 1, 2000, that are located at a facility not previously authorized by a Tier I operating permit, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit within twelve (12) months after becoming a Tier I source or commencing operation, unless the Department provides written notification of an earlier date to the owner or operator. (3-23-98)

02. Earlier Dates During Initial Period. Except as otherwise provided in these rules, during the initial period which begins May 1, 1994 and ends three (3) years after EPA approval of the Tier I operating program, the Department may designate Tier I sources for processing as follows: (5-1-94)

a. The Department may develop a general estimate of the total work load and benefits associated with the Tier I operating permit applications that are predicted to be submitted during the initial period including, but not limited to, original permit applications and significant permit modification applications. (6-15-98)T

b. Considering the complexity of the applications, air quality benefits of permitting and requests for early actions from owners and operators, the Department may divide the applications into three (3) groups each representing approximately one-third (1/3) of the total work load and benefits. (5-1-94)

c. The Department may prioritize the three (3) groups and the Tier I sources within each group for processing, establish early application deadlines and notify the owners or operators of the Tier I sources in the group in writing of a required submittal date earlier than the general deadlines provided in Subsection 313.01. (5-1-94)

03. Renewals of Tier I Operating Permits. The owner or operator of the Tier I source shall submit a complete application to the Department for a renewal of the Tier I operating permit at least ~~nine~~ six (96) months before, but no earlier than eighteen (18) months before, the expiration date of the existing Tier I operating permit. To ensure that the term of the operating permit does not expire before the permit is renewed, the owner or operator is encouraged to submit the application nine (9) months prior to expiration. (~~3-23-98~~)(11-13-98)T

04. Changes to Tier I Operating Permits. Sections 380 through 386 provide the requirements and procedures for changes at Tier I sources and to Tier I operating permits. (6-15-98)T

314. REQUIRED STANDARD APPLICATION FORM AND REQUIRED INFORMATION.

01. General Requirements. (5-1-94)

a. Applications shall be submitted on a form or forms provided by the Department or by other means prescribed by these rules or the Department. The application shall be certified by the responsible official in accordance with Section 123. (5-1-94)

i. If the Tier I source is regulated under 42 U.S.C. Sections 7651 through 7651o, the owner or operator shall also submit nationally-standardized acid rain forms provided by EPA. (5-1-94)

b. All information shall be in sufficient detail so that the Department may efficiently and effectively determine the applicability of requirements and make all other necessary evaluations and determinations. (5-1-94)

02. General Information for the Facility. (5-1-94)

a. Provide identifying information, including the name, address and telephone number of: (5-1-94)

i. The owner; (5-1-94)

ii. The operator; (5-1-94)

iii. The facility where the Tier I source is located; (5-1-94)

iv. The registered agent of the owner, if any; (5-1-94)

v. The registered agent of the operator, if any; (5-1-94)

vi. The responsible official, if other than the owner or operator; and (5-1-94)

vii. The contact person. (5-1-94)

b. Provide a general description of the processes used and products produced by the facility where the Tier I source is located, including any associated with each requested alternative operating scenario and trading scenario. The description shall include narrative and applicable SIC codes. (5-1-94)

c. Provide a general description of each process line affecting a Tier I source. (5-1-94)

~~03. Excess Emissions Procedures. For all air pollution control equipment, emissions units, or other sources from which excess emissions may occur during startup, shutdown, and scheduled maintenance, provide detailed descriptions of the specific procedures which will be used to minimize excess emissions. Specific information for each of these three (3) types of excess emissions events (i.e. startup, shutdown and scheduled maintenance) shall be described in full detail for each piece of control equipment, emissions unit or other source and shall include all of the following: (5-1-94)~~

~~a. Identification of the specific air pollution control equipment, emissions unit, or other source. (5-1-94)~~

~~b. Identification of the specific air pollutants likely to be emitted in excess of applicable standards or limits during the startup, shutdown, or scheduled maintenance period. (5-1-94)~~

~~c. The estimated amount of excess emissions expected to be released during each event. (5-1-94)~~

~~d. The expected duration of each excess emissions event. (5-1-94)~~

~~e. An explanation of why the excess emissions are unavoidable for each of the three (3) types of excess emissions events (i.e. startup, shutdown, and scheduled maintenance). (5-1-94)~~

~~f. Specification of the frequency at which each of the three (3) types of excess emissions events (i.e. startup, shutdown, and scheduled maintenance) are expected to occur. (5-1-94)~~

~~g. For scheduled maintenance, the owner or operator shall also provide detailed explanations of: (5-1-94)~~

~~i. Why the maintenance is needed. (5-1-94)~~

~~ii. Why it is impractical to reduce or cease operation of the emissions unit(s) or other source(s) during the scheduled maintenance period. (5-1-94)~~

~~iii. Why the excess emissions are not avoidable through better scheduling of the maintenance or through better operation and maintenance practices. (5-1-94)~~

~~iv. Why, where applicable, it is necessary to by-pass, take off line, or operate the air pollution control equipment at reduced efficiency while the maintenance is being performed. (5-1-94)~~

~~v. Why auxiliary air pollution control equipment is not used during the scheduled maintenance period to eliminate the excess emissions. (5-1-94)~~

~~h. Justification to explain why the piece of control equipment, emissions unit or other source can not be modified or redesigned to eliminate or reduce the excess emissions which occur during startup, shutdown, and scheduled maintenance. (5-1-94)~~

~~i. Detailed specification of the procedures to be followed by the owner or operator which will minimize excess emissions at all times during startup, shutdown, and scheduled maintenance. These procedures may include such measures as preheating or otherwise conditioning the emissions unit prior to its use or the application of auxiliary air pollution control equipment to reduce the excess emissions. (5-1-94)~~

~~043. Specific Information for Each Emissions Unit. The owner or operator shall provide, in an itemized format, all of the information identified in Subsections 314.054 through 314.121 for each emissions unit, unless the~~

emissions unit is an insignificant activity. ~~(3-3-95)~~(11-13-98)T

054. Emissions. (5-1-94)

a. Identify and describe all emissions of pollutants for which the source is major and all emissions of regulated air pollutants from each emissions unit. Fugitive emissions shall be included in the application in the same manner as stack emissions, regardless of whether the source category is included in the list of sources contained in the definition of major facility (Section 008). (3-23-98)

b. Emissions rates shall be quantified in tons per year (tpy) or for radionuclides the effective dose equivalent (EDE) in millirem per year and in such additional terms as are necessary to determine compliance consistent with the applicable test method. ~~(3-20-97)~~(11-13-98)T

c. Identify and describe all points of emissions in sufficient detail to establish the basis for fees and applicability of requirements of the Clean Air Act. (3-20-97)

d. To the extent it is needed to determine or regulate emissions, identify and quantify all fuels, fuel use, raw materials, production rates, and operating schedules. (5-1-94)

e. Identify and describe all air pollution control equipment and compliance monitoring devices or activities. (5-1-94)

f. Identify and describe all limitations on source operation or any work practice standards affecting emissions. (5-1-94)

g. Provide the calculations on which the information provided under Subsections 314.054.a. through 314.054.e. is based. ~~(5-1-94)~~(11-13-98)T

065. Applicable Requirements. (5-1-94)

a. Cite and describe all applicable requirements affecting the emissions unit; and (5-1-94)

b. Describe or reference all methods required by each applicable requirement for determining the compliance status of the emissions unit with the applicable requirement, including any applicable monitoring, recordkeeping and reporting requirements or test methods. (5-1-94)

076. Other Requirements. Other specific information that may be necessary to determine the applicability of, implement or enforce any requirement of the Act, these rules, 42 U.S.C. Sections 7401 through 7671q or federal regulations. (5-1-94)

087. Proposed Determinations of Nonapplicability. Identify requirements for which the applicant seeks a determination of nonapplicability and provide an explanation of why the requirement is not applicable to the Tier I source. (3-23-98)

098. Alternative Operating Scenarios. (5-1-94)

a. Identify all requested alternative operating scenarios. (5-1-94)

b. Provide a detailed description of all requested alternative operating scenarios. Include all the information required by Section 314 that is relevant to the alternative operating scenario. (5-1-94)

409. Compliance Certifications. (5-1-94)

a. Provide a compliance certification regarding the compliance status of each emissions unit at the time the application is submitted to the Department that: (5-1-94)

i. Identifies all applicable requirements affecting each emissions unit. (5-1-94)

- ii. Certifies the compliance status of each emissions unit with each of the applicable requirements. (5-1-94)
- iii. Provides a detailed description of the method(s) used for determining the compliance status of each emissions unit with each applicable requirement, including a description of any monitoring, recordkeeping, reporting and test methods that were used. Also provide a detailed description of the method(s) required for determining compliance. (5-1-94)
- iv. Certifies the compliance status of the emissions unit with any applicable enhanced monitoring requirements. (5-1-94)
- v. Certifies the compliance status of the emissions unit with any applicable enhanced compliance certification requirements. (5-1-94)
- vi. Provides all other information necessary to determining the compliance status of the emissions unit. (5-1-94)
- b. Provide a schedule for submission of compliance certifications during the term of the Tier I operating permit. The schedule shall require compliance certifications to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department. (5-1-94)
- ~~140.~~ Compliance Plans. (5-1-94)
 - a. Provide a compliance description as follows: (5-1-94)
 - i. For each applicable requirement with which the emissions unit is in compliance, state that the emissions unit will continue to comply with the applicable requirement. (5-1-94)
 - ii. For each applicable requirement that will become effective during the term of the Tier I operating permit that does not contain a more detailed schedule, state that the emissions unit will meet the applicable requirement on a timely basis. (5-1-94)
 - iii. For each applicable requirement that will become effective during the term of the Tier I operating permit that contains a more detailed schedule, state that the emissions unit will comply with the applicable requirement on the schedule provided in the applicable requirement. (5-1-94)
 - iv. For each applicable requirement with which the emission unit is not in compliance, state that the emissions unit will be in compliance with the applicable requirement by the time the Tier I operating permit is issued or provide a compliance schedule in accordance with Subsection 314.140.b. ~~(5-1-94)~~(11-13-98)T
 - b. All compliance schedules shall: (5-1-94)
 - i. Include a schedule of remedial measures leading to compliance, including an verifiable enforceable sequence of actions and specific dates for achieving milestones and achieving compliance. ~~(5-1-94)~~(11-13-98)T
 - ii. ~~Include a schedule for submission to the Department of periodic progress reports no less frequently than every six (6) months or at a more frequent period if one is specified in the underlying applicable requirement or by the Department.~~ (5-1-94)
 - iii. Incorporate the terms and conditions of any applicable consent order, judicial order, judicial consent decree, administrative order, settlement agreement or judgment. (5-1-94)
 - iv. ~~Be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.~~ (5-1-94)
 - c. Provide a schedule for submission ~~of compliance plans during the term of the Tier I operating~~

~~permit. The schedule shall require compliance plans to be submitted no less frequently than annually, or more frequently if to the Department of periodic progress reports no less frequently than every six (6) months or at a more frequent period if one (1) is specified by in the underlying applicable requirement or by the Department.~~

~~(5-1-94)(11-13-98)T~~

121. Trading Scenarios. (5-1-94)

a. Identify all requested trading scenarios, including alternative emissions limits (bubbles) authorized by Section 440. (5-1-94)

b. Provide a detailed description of all requested trading scenarios. Include all the information required by Section 314 that is relevant to the trading scenario and all the information required by Section 440, if applicable. Emissions trades must comply with all applicable requirements. (3-23-98)

c. Provide proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. Emissions trades involving emissions units for which the emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trade shall not be approved. (3-23-98)

132. Additional Information. Provide all additional information that the Department determines is necessary for the Department to efficiently and effectively perform its functions. Such functions include, but are not limited to, determining the applicability of requirements for all regulated air pollutants, determining compliance with applicable requirements, developing or defining Tier I operating permit terms and conditions, defining all approved alternative operating scenarios, evaluating excess emissions procedures or making all necessary evaluations and determinations. ~~(5-1-94)(11-13-98)T~~

(BREAK IN CONTINUITY OF SECTIONS)

316. EFFECT OF INACCURATE INFORMATION IN APPLICATIONS OR FAILURE TO SUBMIT RELEVANT INFORMATION.

~~In addition to other effects provided in these rules, submittal of inaccurate information or failure to submit relevant information in the application may, in the Department's discretion, result in elimination, modification or suspension of any permit shield in the corresponding Tier I operating permit without the reopening of the Tier I operating permit. Notwithstanding the shield provisions of Section 325, the owner or operator shall be subject to enforcement action for operation of the Tier I source without a Tier I operating permit if the owner or operator submitted an incomplete or inaccurate application or the Tier I source is later determined not to qualify for coverage under the conditions and terms of the Tier I operating permit.~~ ~~(5-1-94)(11-13-98)T~~

(BREAK IN CONTINUITY OF SECTIONS)

322. STANDARD CONTENTS OF TIER I OPERATING PERMITS.

All Tier I operating permits shall contain and the Department shall have the authority to impose, implement and enforce, the following elements for all permitted operating scenarios and emissions trading scenarios. Fugitive emissions shall be included in the Tier I operating permit in the same manner as stack emissions. (3-23-98)

01. Emission Limitations and Standards. All Tier I operating permits shall contain emission limitations and standards, including, but not limited to, those operational requirements and limitations that assure compliance with the applicable requirements identified in the application, or determined by the Department to be applicable to the source. (6-15-98)T

02. Authority For and Form of Terms and Conditions. All Tier I operating permits shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based. (5-1-94)

03. Terms or Conditions For Applicable Requirements. All Tier I operating permits shall contain at least one (1) permit term or condition for every applicable requirement specifically identified in the application or determined by the Department to be applicable to the source. (3-23-98)

04. Alternative Operating Scenarios. All Tier I operating permits shall contain terms and conditions to ensure compliance with all applicable requirements for each alternative operating scenario that was requested by the applicant and approved by the Department, including, but not limited to, a requirement that the owner or operator of the source, contemporaneously with making a change from one (1) operating scenario to another, record the change in an operating scenario log located and retained at the permitted facility. (5-1-94)

05. Trading Scenarios. (5-1-94)

a. All Tier I operating permits shall contain terms and conditions for each trading scenario that was requested by the applicant and approved by the Department including, but not limited to, terms and conditions which ensure that any emission trade is quantifiable, accountable, enforceable and based on replicable procedures. (3-23-98)

b. The Tier I operating permit shall state that no permit revision shall be required under ~~Department or EPA~~ approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in the permit. ~~(3-23-98)~~(11-13-98)T

c. The Tier I operating permit shall, at a minimum, include a requirement that the owner or operator of the source, contemporaneously with making a change from one (1) trading scenario to another, record the change in a trading scenario log located and retained at the permitted facility and provide notice to the Department in accordance with Section 383. (3-23-98)

06. Monitoring. All Tier I operating permits shall contain the following with respect to monitoring: (5-1-94)

a. Sufficient monitoring to ensure compliance with all of the terms and conditions of the Tier I operating permit; (5-1-94)

b. All emissions monitoring and analysis procedures or test methods required under the applicable requirements; (5-1-94)

c. If the applicable requirement does not require specific periodic testing or monitoring, terms and conditions requiring periodic monitoring, recordkeeping, or both, that is sufficient to yield reliable data for the relevant time periods that are representative of the emissions unit's compliance with the Tier I operating permit, as reported pursuant to Subsection 322.08, and ensuring the use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement; and (5-1-94)

d. Requirements that the Department determines are necessary, concerning the use, maintenance and installation of monitoring equipment or methods. (5-1-94)

07. Recordkeeping. All Tier I operating permits shall incorporate by reference all applicable requirements regarding recordkeeping and require all of the following: (5-1-94)

a. Sufficient recordkeeping to assure compliance with all of the terms and conditions of the Tier I operating permit. (5-1-94)

b. Recording of monitoring information including but not limited to the following: (5-1-94)

i. The date, place (as defined in the Tier I operating permit) and time of sampling or measurements; (5-1-94)

ii. The date(s) analyses were performed; (5-1-94)

- iii. The company or entity that performed the analyses; (5-1-94)
 - iv. The analytical techniques or methods used; (5-1-94)
 - v. The results of such analyses; and (5-1-94)
 - vi. The operating conditions existing at the time of sampling or measurement. (5-1-94)
 - c. Retention of all monitoring records and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report or application. Supporting information includes but is not limited to all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation and copies of all reports required by the Tier I operating permit. (5-1-94)
08. Reporting. All Tier I operating permits shall incorporate by reference all applicable requirements regarding reporting and require all of the following: (5-1-94)
- a. Sufficient reporting to assure compliance with all of the terms and conditions of the Tier I operating permit. (5-1-94)
 - b. Prompt reporting of deviations from permit requirements including, but not limited to, those attributable to excess emissions. If the deviation is an excess emission, the report shall be submitted in accordance with the requirements of Sections 130 through 136. For all other deviations, the report shall be submitted in accordance with Subsection 322.08.c. unless the permit specifies another time frame. The reports shall describe the probable cause of such deviations and any corrective actions or preventative measures taken. (3-23-98)
 - c. Submittal of reports for any required monitoring at least every six (6) months. All instances of deviations from Tier I operating permit requirements, which include monitoring, recordkeeping, and reporting, must be clearly identified in such reports. All required reports must be certified in accordance with Section 123. ~~(5-1-94)~~(11-13-98)T
09. Testing. All Tier I operating permits shall contain terms and conditions requiring sufficient testing to assure compliance with all of the terms and conditions of the Tier I operating permit. (5-1-94)
10. ~~Initial Compliance Schedule and Progress Reports Plan~~. All Tier I operating permits shall contain terms and conditions regarding the compliance plan submitted in the application in accordance with Subsection 314.140 including all of the following: ~~(5-1-94)~~(11-13-98)T
- a. For ~~emissions units triggering the requirement to submit a compliance schedule~~ each applicable requirement for which the source is not in compliance at the time of the permit issuance, terms and conditions consistent with the compliance schedule submitted by the applicant including all of the following: ~~(5-1-94)~~(11-13-98)T
 - i. A schedule of remedial measures leading to compliance including an verifiable enforceable sequence of actions and specific dates for achieving the milestones and achieving compliance. ~~(3-23-98)~~(11-13-98)T
 - ii. A requirement that the permittee submit periodic progress reports to the Department no less frequently than every six (6) months or at a more frequent period if one is specified in the underlying applicable requirement or by the Department. (5-1-94)
 - iii. A requirement that any progress report shall include a statement of when the milestones and compliance were or will be achieved, an explanation of why any dates in the compliance schedule submitted by the applicant or in the terms or conditions of the Tier I operating permit were not or will not be met and a detailed description of any preventative or corrective measures undertaken by the permittee. (5-1-94)
 - iv. All terms and conditions of any applicable consent order, judicial order, judicial consent decree, administrative order, settlement agreement or judgment. (5-1-94)

v. A statement that the terms and conditions regarding the compliance schedule are supplemental to, and do not sanction noncompliance with, the underlying applicable requirement. (5-1-94)

b. For each applicable requirement that will become effective during the term of the Tier I operating permit and that requires a detailed compliance schedule, the permit shall include such compliance schedule. (11-13-98)T

c. For each applicable requirement that will become effective during the term of the Tier I operating permit that does not require a detailed compliance schedule, the permit shall include a statement that the permittee shall meet, on a timely basis, all such applicable requirements. (11-13-98)T

~~b. For emissions units not triggering the requirement to submit a compliance schedule, terms and conditions, as applicable, requiring the permittee to shall continue to comply with applicable requirements, to meet the applicable requirements on a timely basis or on the schedule described in the applicable requirement, or to meet the applicable requirement by the time the Tier I operating permit is issued. (5-1-94)~~

11. Periodic Compliance Certifications. Each Tier I operating permit shall require submittal of compliance certifications during the term of the permit for each emissions unit to the Department and the EPA as follows: (5-1-94)

a. Compliance certifications for all emissions units shall be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department. (5-1-94)

b. The compliance certification for each emissions unit shall address all of the terms and conditions contained in the Tier I operating permit that are applicable to such emissions unit including emissions limitations, standards and work practices. (5-1-94)

c. The compliance certification shall be in an itemized format providing the following information: (5-1-94)

i. The identification of each term or condition of the Tier I operating permit for which compliance is being certified that is the basis of the certification; (5-1-94)(11-13-98)T

~~ii. The compliance history of the emissions unit with the identified term or condition, including a statement of the emissions unit's current compliance status; (5-1-94)~~

~~iii. A statement of whether compliance was continuous or intermittent during the reporting period and, if it was intermittent, provide the dates of noncompliance; (5-1-94)~~

~~iv. A description of the method(s) used for determining the compliance status of the emissions unit throughout the reporting period; (5-1-94)~~

~~v. All other information necessary to determining the compliance status of the emissions unit; and (5-1-94)~~

~~vi. Such additional contents and requirements as may be specified by the Department or the EPA pursuant to 42 U.S.C. Section 7414(a)(3), 42 U.S.C. Section 7661e(b), Sections 121 or 122 of these rules. (5-1-94)~~

ii. The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required by the Tier I operating permit. If necessary, the owner or operator shall identify any other material information that must be included in the certification to comply with Section 113(c)(2) of the Clean Air Act which prohibits knowingly making a false certification or omitting material information; (11-13-98)T

iii. The status of compliance with the terms and conditions of the Tier I operating permit for the period

covered by certification, based on the method or means designated in Subsection 322.11.c.ii. above. The certification shall identify each excursion or exceedance and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and (11-13-98)T

iv. Such information as the Department may require to determine the compliance status of the emissions unit. (11-13-98)T

d. All original compliance certifications shall be submitted to the Department and a copy of all compliance certifications shall be submitted to the EPA; (5-1-94)

~~12. Periodic Compliance Plan. Each Tier I operating permit shall require submittal of compliance plans during the term of the permit for each emissions unit to the Department as follows:-~~ (5-1-94)

~~a. Compliance plans for all emissions units shall be submitted no less frequently than annually, or more frequently if specified by the underlying term or condition or by the Department.~~ (5-1-94)

~~b. The compliance plan shall provide a compliance description as follows:-~~ (5-1-94)

~~i. For each term or condition with which the emissions unit is in compliance, state that the emissions unit will continue to comply with the term or condition.~~ (5-1-94)

~~ii. For each term or condition that will become effective during the term of the Tier I operating permit that does not contain a more detailed schedule, state that the emissions unit will meet the term or condition on a timely basis.~~ (5-1-94)

~~iii. For each term or condition that will become effective during the term of the Tier I operating permit that expressly contains a more detailed schedule, state that the emissions unit will comply with the term or condition on the schedule provided in the term or condition.~~ (5-1-94)

~~iv. For each term or condition with which the emission unit is not in compliance, state that the emissions unit shall be in compliance during the entire subsequent reporting period or provide a compliance schedule that complies with Subsection 322.12.c.~~ (5-1-94)

~~e. All compliance schedules shall:-~~ (5-1-94)

~~i. Include a schedule of remedial measures leading to compliance, including a verifiable sequence of actions and specific dates for achieving milestones and achieving compliance.~~ (5-1-94)

~~ii. Include a schedule for submission to the Department of periodic progress reports no less frequently than every six (6) months or at a more frequent period if one is specified in the underlying permit term or condition or by the Department.~~ (5-1-94)

~~iii. Incorporate the terms and conditions of any applicable consent order, judicial order, judicial consent decree, administrative order, settlement agreement or judgment.~~ (5-1-94)

~~iv. Be supplemental to, and shall not sanction noncompliance with, the terms or conditions on which it is based.~~ (5-1-94)

~~d. The Department may develop terms and conditions consistent with the compliance schedule submitted by the permittee including all of the terms and conditions specified in Subsection 322.10.a.~~ (5-1-94)

~~13. Permit Conditions Regarding Acid Rain Allowances.~~ (5-1-94)

~~a. A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds.~~ (5-1-94)

b. No limit shall be placed on the number of allowances held by the source and no permit revisions shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(3-23-98)

c. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(5-1-94)

d. Any such allowance shall be accounted for according to the procedures established in 40 CFR Part 72 and 40 CFR Part 73.

(5-1-94)

~~143.~~ Permit Duration. Each Tier I operating permit shall state that it is effective for a fixed term of five (5) years; except that during the first four (4) years after EPA approval of the Tier I operating permit program, the permit may be issued with an initial term of three (3) years to five (5) years unless the Tier I source is also a Phase II source.

(5-1-94)

~~154.~~ Other Specific Requirements. Any terms or conditions determined by the Department to be necessary for approval of the Tier I operating permit.

(5-1-94)

~~165.~~ General Requirements. Each Tier I operating permit shall contain provisions stating the following:

(5-1-94)

a. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation and is grounds for enforcement action; for permit revocation, termination, revocation and reissuance, or revision; or for denial of a permit renewal application.

(5-1-94)

b. It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce any activity in order to maintain compliance with the terms and conditions of this permit.

(5-1-94)

c. This permit may be revised, revoked, reopened and reissued, or terminated for cause.

(5-1-94)

d. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(5-1-94)

e. This permit does not convey any property rights of any sort, or any exclusive privilege.

(5-1-94)

~~f. The permittee shall furnish all information requested by the Department under Section 122 and any information, within a reasonable time, that the Department may request in writing to determine whether cause exists for modifying, revoking, revoking and reissuing or terminating the permit or to determine compliance with the permit or other requirements.~~

~~(5-1-94)(11-13-98)T~~

g. Upon request, the permittee shall furnish to the Department copies of records required to be kept by this permit.

(5-1-94)

h. The provisions of this permit are severable, and if any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

(5-1-94)

i. The permittee shall comply with Sections 380 through 386 as applicable.

(6-15-98)T

j. Unless specifically identified as a "State Only" provision, all terms and conditions in the this permit, including any terms and conditions designed to limit a source's potential to emit, are enforceable:

(5-1-94)

i. By the Department in accordance with State law; and

(5-1-94)

ii. By the United States or any other person in accordance with Federal law.

(5-1-94)

- k. Provisions specifically identified as a "State Only" provision are enforceable only in accordance with State law. "State Only" provisions are those that are not required under the Federal Clean Air Act or under any of its applicable requirements or those provisions adopted by the State prior to federal approval. (3-23-98)
- l. Upon presentation of credentials, the permittee shall allow the Department or an authorized representative of the Department to do the following: (5-1-94)
- i. Enter upon the permittee's premises where a Tier I source is located or emissions-related activity is conducted, or where records are kept under the conditions of this permit; (5-1-94)
 - ii. Have access to and copy, at reasonable times, any records that are kept under the conditions of this permit; (5-1-94)
 - iii. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under this permit; and (5-1-94)
 - iv. Sample or monitor at reasonable times substances or parameters for the purpose of determining or ensuring compliance with this permit or applicable requirements. (5-1-94)
- m. Nothing in this permit shall alter or affect the following: (5-1-94)
- i. Any administrative authority or judicial remedy available to prevent or terminate emergencies or imminent and substantial dangers; (5-1-94)
 - ii. The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance; (5-1-94)
 - ~~iii. Applicable requirements proposed or promulgated after the date of issuance;~~ (5-1-94)
 - ~~iv.~~ ii. The applicable requirements of the acid rain program, consistent with 42 U.S.C. Section 7651g(a); (5-1-94)
 - iv. The owner or operator's duty to provide information. (5-1-94)
- n. The owner or operator of a Tier I source shall pay registration fees to the Department in accordance with Sections 525 through 538, which are hereby incorporated by reference. (5-1-94)
- o. All documents submitted to the Department shall be certified in accordance with Section 123 and comply with Section 124. (5-1-94)
- p. If a timely and complete application for a Tier I operating permit renewal is submitted, but the Department fails to issue or deny the renewal permit before the end of the term of the previous permit, then all the terms and conditions of the previous permit including any permit shield that may have been granted pursuant to Section 325 shall remain in effect until the renewal permit has been issued or denied. (5-1-94)
- q. The permittee shall promptly report deviations from permit requirements including, but not limited to, those attributable to excess emissions. If the deviation is an excess emission, the report shall be submitted in accordance with the requirements of Sections 130 through 136. For all other deviations, the report shall be submitted in accordance with Subsection 322.08.c. unless the permit specifies another time frame. The reports shall describe the probable cause of such deviations and any corrective actions or preventative measures taken. (3-23-98)

(BREAK IN CONTINUITY OF SECTIONS)

332. EMERGENCY AS AN AFFIRMATIVE DEFENSE REGARDING EXCESS EMISSIONS.

01. General. An emergency, as defined in ~~Subsection 008-08-a.~~, constitutes an affirmative defense to an action brought for ~~emissions exceeding a~~ noncompliance with such technology-based emission limitation if the conditions of Subsection 332.02 are met. (5-1-94)(11-13-98)T

02. Demonstration of Emergency. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that: (5-1-94)

a. An emergency occurred and that the permittee can identify the cause(s) of the emergency; (5-1-94)

b. The permitted facility was at the time being properly operated; (5-1-94)

c. During the period of the emergency, the permittee took all reasonable steps, as determined by the Department, to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and (5-1-94)

d. The permittee submitted written notice of the emergency to the Department within two (2) working days of the time when emission limitations were exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken. Compliance with this section satisfies the written reporting requirements under Section 135 and Subsection 322.15.g. (5-1-94)(11-13-98)T

03. Burden of Proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof. (5-1-94)

04. Applicability. Section 332 is in addition to any emergency or upset provision contained in any applicable requirement. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

335. GENERAL TIER I OPERATING PERMITS AND AUTHORIZATIONS TO OPERATE.

01. Issuance of General Tier I Operating Permits. The Department may, after notice and opportunity for public participation provided in accordance with Section 364, issue a general Tier I operating permit covering numerous similar sources. (5-1-94)

02. Contents of General Tier I Operating Permits. Each general Tier I operating permit: (5-1-94)

a. Shall include all terms and conditions identified in Sections 322 and 325. (3-23-98)

b. Shall include specific criteria by which sources may qualify for coverage under the general Tier I operating permit; and (5-1-94)

c. May provide for applications which deviate from the requirements of Sections 311 through 315, provided that such applications meet all other requirements of 42 U.S.C. 7661 through 7661f and include all information necessary to determine qualification for, and to ensure compliance with, the general Tier I operating permit. (3-23-98)

03. Applications for Authorizations to Operate. The owner or operator of a Tier I source may apply for an authorization to operate under the terms and conditions of a general Tier I operating permit by: (5-1-94)

a. Stating in the application submitted pursuant to Sections 311 through 315 that the owner or operator has determined that the Tier I source qualifies for coverage under a specifically identified general Tier I

operating permit and that the owner or operator requests that operations of the Tier I source be authorized under a specifically identified general Tier I operating permit; or (5-1-94)

b. Complying with the specific application requirements, if any, provided in the general Tier I operating permit. (5-1-94)

04. Procedures for Issuing Authorizations to Operate. Without repeating the public participation procedures required under Section 364, the Department shall issue an authorization to operate a Tier I source under a specifically identified general Tier I operating permit if the Department determines that the Tier I source qualifies for coverage. (3-23-98)

05. Review of Authorizations to Operate. The issuance of an authorization to operate shall be a final agency action for purposes of administrative and judicial review of the authorization. The general Tier I operating permit shall not be subject to administrative or judicial review upon the issuance of an authorization to operate. (5-1-94)

~~06. Effect of Incomplete or Inaccurate Applications. Notwithstanding the shield provisions of Section 325, the owner or operator shall be subject to enforcement action for operation of the Tier I source without a Tier I operating permit if the owner or operator submitted an incomplete or inaccurate application or the Tier I source is later determined not to qualify for coverage under the conditions and terms of the general Tier I operating permit. (3-23-98)~~

~~07. Phase II Sources. General Tier I operating permits shall not be authorized for Phase II sources under the acid rain program unless otherwise provided in 40 CFR Part 72. (5-1-94)~~

(BREAK IN CONTINUITY OF SECTIONS)

~~380. PERMIT AMENDMENTS, MODIFICATIONS, CHANGES REQUIRING NOTICE, AND REOPENINGS CHANGES TO TIER I OPERATING PERMITS.~~

01. Applicability. Sections 380 through 386 establish procedures and requirements for permit revisions and changes requiring notice. These provisions do not alter the requirements for permits to construct set forth at Sections 200 through 225. ~~(6-15-98)T(11-13-98)T~~

~~02. Amendments and Modifications. A permittee may elect or be required by the Department to make a Tier I permit revision — administrative amendment (Section 381), significant (Section 382) or minor permit modifications (Section 383) — as appropriate, if the proposed or actual change at or involving the Tier I source: Changes Requiring Permit Revisions. Sections 381 through 383 establish procedures and requirements for Tier I operating permit revisions. (6-15-98)T(11-13-98)T~~

- ~~a. Requires a change to the text of a Tier I permit; (6-15-98)T~~
- ~~b. Triggers a new applicable requirement not addressed in the Tier I permit; (6-15-98)T~~
- ~~e. Contravenes an existing term or condition in the Tier I permit; or (6-15-98)T~~
- ~~d. Is a modification under any provision of Title I of the Clean Air Act. (6-15-98)T~~

03. Changes Requiring Notice. Sections 384 and 385 establish procedures and requirements for providing notice by the permittee to the Department and EPA of certain emission trades and changes that contravene a permit term (Section 384), or certain changes that are not addressed or prohibited by the permit (Section 385). (6-15-98)T

04. Reopening. Section 386 establishes procedures for reopening the permit for cause by the

Department, EPA, or the permittee. (6-15-98)T

05. Acid Rain. Changes regulated under Title IV of the Clean Air Act, 42 U.S.C. Sections 7651 through 7651o, shall be governed by regulations promulgated under Title IV of the Act. (6-15-98)T

381. ADMINISTRATIVE PERMIT AMENDMENTS.

01. Criteria. An administrative permit amendment is a permit revision that: (6-15-98)T

a. Corrects typographical errors; (6-15-98)T

b. Identifies a change in the name, address, or phone number of any person identified in the Tier I operating permit, or provides a similar minor administrative change at the Tier I source; (6-15-98)T

c. Requires more frequent monitoring or reporting by the permittee; (6-15-98)T

d. Allows for a change in ownership or operational control of a Tier I source where the Department determines that no other change in the Tier I operating permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department; (6-15-98)T

e. Incorporates into the Tier I operating permit the requirements from a permit to construct that was issued by the Department in accordance with Subsection 209.05.b.c.; or ~~(6-15-98)T~~(11-13-98)T

f. Is any other type of change that EPA and the Department have determined as part of the Part 70 program to be similar to those in Subsections 381.01.a. through 381.01.d. (6-15-98)T

02. Administrative Permit Amendment Application Procedures. (6-15-98)T

a. If initiated by the permittee, the permittee shall submit a request to the Department. The request shall: (6-15-98)T

i. State at the beginning of the request that it is a "REQUEST FOR ADMINISTRATIVE PERMIT AMENDMENT". (6-15-98)T

ii. Describe the proposed administrative permit amendment including any permit to construct to be incorporated; (6-15-98)T

iii. State the date on which the proposed administrative amendment will occur at the facility; (6-15-98)T

iv. Identify any Tier I operating permit term or condition that is no longer applicable as a result of the change; and (6-15-98)T

v. Identify any applicable requirement that would apply to the Tier I source as a result of the change. (6-15-98)T

b. If initiated by the Department, the Department shall notify the permittee that the Department is initiating an administrative permit amendment and provide a brief summary of the proposed administrative permit amendment including all of the information required by Subsection 381.02.a.i. through 381.02.a.v. (6-15-98)T

c. The Department shall, within sixty (60) days of the receipt of a request for an administrative permit amendment, take final action on the request and may incorporate such changes without providing notice to the public or affected States provided that the Department designates any such administrative permit amendment as having been made pursuant to Section 381. ~~Unless the Department has already submitted a copy of the revised permit to EPA under Subsection 209.05.b.v.,~~ The Department shall submit a copy of the revised permit, or an addendum, to the EPA and send the original to the permittee. ~~(6-15-98)T~~(11-13-98)T

03. Implementation Procedures. (6-15-98)T

a. The permittee may implement the changes addressed in the request for an administrative permit amendment under Subsections 381.01.a. through 381.01.f. immediately upon submittal of the request. (6-15-98)T

b. If the permittee obtains a permit to construct under Subsection 209.05.b., then so long as the change does not violate any terms or conditions of the existing Tier I operating permit, the permittee may operate the source described in the permit to construct immediately upon submittal of the request for an administrative permit amendment. (6-15-98)T

04. Permit Shield. Upon final action by the Department, the permit shield described in Section 325 shall extend only to administrative permit amendments identified in Subsection 381.01.e. (6-15-98)T

382. SIGNIFICANT PERMIT MODIFICATION.

01. Criteria. Significant modification procedures shall be used for applications requesting permit revisions that do not qualify as minor permit modifications or as administrative amendments. Nothing herein shall be construed to preclude the permittee from making changes consistent with this chapter that would render existing permit compliance terms and conditions irrelevant. A significant permit modification is a permit revision for changes that: (6-15-98)T

a. Violate an existing Tier I permit term or condition derived from an applicable requirement; (6-15-98)T

b. Involve significant changes to existing monitoring, reporting or recordkeeping requirements in the permit. Every significant change in existing monitoring terms or conditions (except more frequent monitoring or reporting under Subsection 381.01.c.) and every relaxation of reporting or recordkeeping terms or conditions shall be considered significant; (6-15-98)T

c. Require or change a case-by-case determination of an emission limitation or other standard; a source-specific determination for temporary sources of ambient impacts; or a visibility or increment analysis; (6-15-98)T

d. Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to, an enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the Clean Air Act or an alternative emissions limit for an early reduction of hazardous air pollutants that was approved pursuant to regulations promulgated under 42 U.S.C. Section 7412(i)(5) of the Clean Air Act; (6-15-98)T

e. Constitute a modification under any provision of Title I of the Clean Air Act; or (6-15-98)T

f. Could be processed as an administrative amendment or as a minor modification, except the permittee has requested the change be processed as a significant modification, including incorporating the requirements of a permit to construct that was issued by the Department in accordance with Subsection 209.05.a. (6-15-98)T

02. Significant Permit Modification Application Procedures. A permittee may initiate a significant permit modification by submitting a complete significant permit modification application to the Department. The application shall: (6-15-98)T

a. Request the use of significant permit modification procedures and state at the beginning of the request that it is a "REQUEST FOR SIGNIFICANT PERMIT MODIFICATION"; (6-15-98)T

b. Meet the standard application requirements of Sections 314 and 315; (6-15-98)T

- c. Provide a summary sheet; (6-15-98)T
- i. Describing the proposed significant permit modification; (6-15-98)T
- ii. Describing and quantifying any change in emissions resulting from the significant permit modification including, but not limited to, an identification of any new regulated air pollutant(s) that will be emitted; ~~(6-15-98)T~~(11-13-98)T
- iii. Identifying any Tier I operating permit term or condition that will no longer be applicable as a result of the significant permit modification; and (6-15-98)T
- iv. Identifying new applicable requirement resulting from the change. (6-15-98)T
- d. Significant permit modifications shall be issued in accordance with all procedural requirements as they apply to Tier I operating permit issuance and renewal, including those for applications (Sections 314 and 315), public participation (Section 364), review by affected States (Sections 364 and 365), and review by EPA (Section 366). (6-15-98)T
- e. The Department will process the majority of significant permit modifications within nine (9) months of receiving a complete application. The Department shall determine which significant permit modification applications will be processed within nine (9) months. (6-15-98)T

03. Implementation Procedures. The permittee shall comply with Sections 200 through 225~~3~~ as applicable, including Subsection 209.05 governing permit to construct procedures for Tier I sources. ~~(6-15-98)T~~(11-13-98)T

04. Permit Shield. Upon final action by the Department, the permit shield described in Section 325 shall extend to significant permit modifications. (6-15-98)T

383. MINOR PERMIT MODIFICATION.

- 01. Criteria. (6-15-98)T
 - a. Minor permit modification procedures may be used for permit modifications involving economic incentives, marketable permits, emissions trading, and other similar approaches explicitly provided for in the SIP or applicable requirements promulgated by EPA. A permittee may not use minor modification procedures for changes described in Subsections 382.01.a. through 382.01.e. (6-15-98)T
 - b. Any other permit modification that is not required to be processed as a significant permit modification under Section 382. (6-15-98)T
 - c. Groups of a permittee's applications eligible for processing as minor permit modifications may be processed under minor permit modification procedures if collectively, the changes proposed in the minor modification applications do not exceed the lesser of:
 - i. Ten percent (10%) of the emissions allowed by the existing Tier I operating permit for the emissions unit for which the change is requested; (6-15-98)T
 - ii. Twenty percent (20%) of the major facility criteria in ~~sub~~section 008.14; or ~~(6-15-98)T~~(11-13-98)T
 - iii. Five (5) tons per year. (6-15-98)T
- 02. Minor Permit Modification Application Procedures. A permittee may initiate a minor permit modification by submitting a complete standard application described in Section 314 to the Department. The application shall:
 - a. Request the use of minor permit modification procedures and state at the beginning of the request

that it is a "REQUEST FOR MINOR PERMIT MODIFICATION", designate either "INDIVIDUAL" or "GROUP" processing, and provide a summary sheet; (6-15-98)T

- i. Describing the proposed minor permit modification; (6-15-98)T
 - ii. Stating the date on which the proposed minor permit modification will occur at the facility; (6-15-98)T
 - iii. Describing and quantifying any change in emissions resulting from the minor permit modification including, but not limited to, an identification of any new regulated air pollutant(s) that will be emitted; ~~(6-15-98)T~~(11-13-98)T
 - iv. Identifying any Tier I operating permit term or condition that will no longer be applicable as a result of the minor permit modification; (6-15-98)T
 - v. Identifying any new applicable requirement that is applicable to the Tier I source as a result of the minor permit modification; (6-15-98)T
 - vi. Certifying by a responsible official under Section 123 that the proposed permit modification meets the criteria for a minor permit modification and, if applicable, the use of group processing procedures; and (6-15-98)T
 - vii. Listing the permittee's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with the other applications, equals or exceeds the thresholds under Subsection 383.01.c. above. (6-15-98)T
- b. Include completed forms for the Department to use to notify the EPA and affected States as required under Sections 364 and 366. (6-15-98)T
 - c. Include the applicant's suggested draft Tier I permit with the minor permit modification. (6-15-98)T
03. EPA and Affected State Notification Procedures. (6-15-98)T
- a. Within five (5) working days of receipt of a complete minor permit modification application, the Department shall notify EPA and the affected States of the requested permit modification and forward the forms completed by the applicant and other required information, if any, to the EPA and affected States. Affected States and EPA review shall occur simultaneously. (6-15-98)T
 - b. On a quarterly basis or within five (5) working days of receiving an application demonstrating that the aggregate of a permittee's pending applications equals or exceeds the threshold level established in Subsection 383.01.c. above, whichever is earlier, the Department shall notify EPA and the affected States of the requested permit modification and forward the forms completed by the applicant and other required information, if any, to the EPA and affected States. Affected States and EPA review shall occur simultaneously. (6-15-98)T
 - c. The Department shall promptly notify EPA and any affected States in writing including its reasons for not accepting any such recommendation if the Department refuses to accept all the timely recommendations submitted by affected States. (6-15-98)T
 - d. Timetable for Issuance. The Department may not issue a final permit modification until after EPA's forty-five (45) day review period or until EPA has notified the Department that EPA will not object to issuance of the permit modification, whichever is first; although the Department can approve the permit modification prior to that time. (6-15-98)T
 - e. Within ninety (90) days of the Department's receipt of a complete minor permit modification application or within fifteen (15) days after the end EPA's forty-five (45) day review period, whichever is later, the Department shall take one (1) of the following actions: (6-15-98)T

- i. Issue the minor permit modification as proposed; (6-15-98)T
- ii. Deny the minor permit modification application; (6-15-98)T
- iii. Determine that the requested minor permit modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or (6-15-98)T
- iv. Revise the proposed minor permit modification, transmit the revised proposal to the EPA in accordance with Section 366, and notify the permittee. (6-15-98)T
- f. Within one hundred and eighty (180) days of the Department's receipt of a complete application for modifications eligible for group processing or within fifteen (15) days after the end of EPA's forty-five (45) day review period, whichever is later, the Department shall take one (1) of the actions specified in Subsections 383.03.e.i., 383.03.e.ii., 383.03.e.iii., or 383.03.e.iv. (6-15-98)T
- 04. Implementation Procedures. (6-15-98)T
 - a. The permittee may make the change proposed in its minor permit modification immediately upon submittal of a complete application to the Department before final action by the Department. (6-15-98)T
 - b. After the source makes the allowed change and until the Department takes any of the actions specified in Subsections 383.03.e.i., 383.03.e.ii., or 383.03.e.iii., the permittee must comply with both the applicable requirements governing the change and the proposed terms and conditions. (6-15-98)T
 - c. During this time period, the permittee need not comply with the existing permit terms and conditions it seeks to modify; provided that, if the source fails to comply with the applicable requirements governing the change and the proposed revisions, the existing permit terms and conditions it seeks to modify may be enforced against it. (6-15-98)T
- 05. Permit Shield. The permit shield described in Section 325 shall not apply to any minor permit modification. (6-15-98)T

384. SECTION 502(b)(10) CHANGES AND CERTAIN EMISSION TRADES.

- 01. Criteria. This section authorizes emission changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of the Title I of the Clean Air Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or total emissions). (6-15-98)T
 - a. Changes authorized are changes that: (6-15-98)T
 - i. Are Section 502(b)(10) changes; (6-15-98)T
 - ii. Are changes involving trades of increases and decreases of emissions within the permitted facility where the State Implementation Plan provides for such emissions trades without requiring a permit revision. SIP trades are allowed in compliance with this Section even if the Tier I operating permit does not already provide for such emission trading; or (6-15-98)T
 - iii. Are changes made under the terms and conditions of the Tier I permit that authorize the trading of emissions increases and decreases within the permitted facility for the purpose of complying with a federally-enforceable emissions cap that is established by the Department in the Tier I operating permit independent of otherwise applicable requirements. (6-15-98)T
 - b. Changes constituting a modification under Title I of the Clean Air Act or subject to a requirement under Title IV of the Clean Air Act are not authorized by this Section. (6-15-98)T

02. Notice Procedures. The permittee may make a change under this Section if the permittee provides written notification to the Department and EPA so that the notification is received at least seven (7) days in advance of the proposed change; or, in the event of an emergency, the permittee provides the notification so that it is received at least twenty-four (24) hours in advance of the proposed change. The permittee, the Department, and EPA shall attach the notification to their copy of the Tier I operating permit. (6-15-98)T

- a. For each such change, the written notification shall: (6-15-98)T
 - i. State at the beginning of the notification "NOTIFICATION OF SECTION 502(b)(10) CHANGE" or "NOTIFICATION OF EMISSION TRADE"; (6-15-98)T
 - ii. Describe the proposed change; (6-15-98)T
 - iii. Provide the date on which the proposed change will occur; (6-15-98)T
 - iv. Describe and quantify any expected change in emissions including identification of any new regulated air pollutant(s) that will be emitted; (~~6-15-98~~)T(11-13-98)T
 - v. Identify any permit term or condition that is no longer applicable as a result of the change; (6-15-98)T
 - vi. Specifically identify and describe the emergency, if any; and (6-15-98)T
 - vii. Identify any new applicable requirement that would apply to the Tier I source as a result of the change. (6-15-98)T
- b. For changes described in Subsection 384.01.a.ii., the written notification shall also include: (6-15-98)T
 - i. Identification of the provisions in the SIP that provide for the emissions trade; (6-15-98)T
 - ii. All of the information required by the provision in the SIP authorizing the emissions trade; (6-15-98)T
 - iii. Specific identification of the provisions in the SIP with which the permittee will comply; and (6-15-98)T
 - iv. The pollutants subject to the trade. (6-15-98)T
- c. For changes described in Subsection 384.01.a.iii., the written notification shall also describe how the change will comply with the terms and conditions of the permit. (6-15-98)T

03. Permit Shield. The permit shield described in Section 325 shall only extend to changes made in accordance with Subsection 384.01.a.iii. (6-15-98)T

385. OFF-PERMIT CHANGES AND NOTICE.

01. Criteria. This section authorizes changes that are neither addressed nor prohibited by the Tier I operating permit to be made without a permit revision if each such change meets all applicable requirements and does not violate any existing permit terms or conditions. Changes constituting a modification under Title I of the Clean Air Act, or subject to a requirement under Title IV of the Clean Air Act are not off-permit changes. (6-15-98)T

02. Notice Procedure. Sources must provide written notice to the Department and EPA of each such change except changes that qualify as insignificant under Section 317, within seven (7) days of making the off-permit change. (6-15-98)T

- a. The written notification provided to the Department and EPA shall: (6-15-98)T

- i. State at the beginning of the notification "NOTIFICATION OF OFF-PERMIT CHANGE"; (6-15-98)T
 - ii. Describe the off-permit change; (6-15-98)T
 - iii. State the date on which the off-permit change will occur or has occurred; (6-15-98)T
 - iv. Describe and quantify any change in emissions resulting from the off-permit change including, but not limited to, an identification of any new regulated air pollutant(s) that will be emitted; and ~~(6-15-98)T~~(11-13-98)T
 - v. Identify any new applicable requirement that is applicable to the Tier I source as a result of the off-permit change. (6-15-98)T
 - b. The permittee shall keep a record at the facility describing all off-permit changes made at the Tier I source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and identifying the emissions resulting from those changes. (6-15-98)T
03. Permit Shield Applicability. The permit shield described in Section 325 shall not apply to any off-permit change. (6-15-98)T

(BREAK IN CONTINUITY OF SECTIONS)

401. TIER II OPERATING PERMIT.

01. Optional Tier II Operating Permits. The owner or operator of any stationary source or facility which is not subject to (or wishes to ~~not out of~~ accept limitations on the facility's potential to emit so as to not be subject to) Sections 300 through 386 may apply to the Department for an operating permit to: ~~(6-15-98)T~~(11-13-98)T
- a. Authorize the use of alternative emission limits (bubbles) pursuant to Section 440; (5-1-94)
 - b. Authorize the use of an emission offset pursuant to Sections 204 or 206; (5-1-94)
 - c. Authorize the use of a potential to emit limitation, an emission reduction or netting transaction to exempt a facility or modification from certain requirements for a permit to construct; ~~(5-1-94)~~(11-13-98)T
 - d. Authorize the use of an emission reduction to exempt the facility from Tier I permitting requirements. (5-1-94)
 - e. Bank an emission reduction credit pursuant to Section 461; (5-1-94)
02. Required Tier II Operating Permits. A Tier II operating permit is required for any stationary source or facility which is not subject to Sections 300 through 386 with a permit to construct which establishes any emission standard different from those in these rules. (6-15-98)T
03. Tier II Operating Permits Required by the Department. The Director may require or revise a Tier II operating permit for any stationary source or facility whenever the Department determines that: (5-1-94)
- a. Emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increment; or ~~(5-1-94)~~(11-13-98)T
 - b. Specific emission standards, or requirements on operation or maintenance are necessary to ensure compliance with any applicable emission standard or rule. (5-1-94)

04. Multiple Tier II Operating Permits. Subject to approval by EPA, ~~the~~ Director may issue one (1) or more Tier II operating permits to a facility which allow any specific stationary source or emissions unit within that facility a future compliance date of up to three (3) years beyond the compliance date of any provision of these rules, provided the Director has reasonable cause to believe such a future compliance date is warranted.

~~(5-1-94)~~(11-13-98)T

402. APPLICATION PROCEDURES.

Application for a Tier II operating permit must be made using forms furnished by the Department, or by other means prescribed by the Department. The application shall be certified by the responsible official and shall be accompanied by all information necessary to perform any analysis or make any determination required under Sections 400 through 406.

(5-1-94)

01. Required Information. Site information, plans, description, specifications, and drawings showing the design of the stationary source, facility, or modification, the nature and amount of emissions (including secondary emissions), and the manner in which it will be operated and controlled.

(5-1-94)

02. Additional Specific Information.

(5-1-94)

a. For emission reduction credits, ~~A~~ description of the emission reduction credits proposed for use, including descriptions of the stationary sources or facilities providing the reductions, a description of the system of continuous emission control which provides the emission reduction credits, emission estimates, and other information necessary to determine that the emission reductions satisfy the requirements for emission reduction credits (Section 460); and

~~(5-1-94)~~(11-13-98)T

b. For alternative emission limits (bubbles) or emission offsets, information on the air quality impacts of the traded emissions as necessary to determine the change in ambient air quality that would occur.

(5-1-94)

c. For restrictions on potential to emit, a description of the proposed potential to emit limitations including the proposed monitoring and recordkeeping requirements that will be used to verify compliance with the limitations.

(11-13-98)T

03. Estimates of Ambient Concentrations. All estimates of ambient concentrations shall be based on the applicable air quality models, data bases, and other requirements specified in ~~the U.S. Environmental Protection Agency's "Guideline on Air Quality Models (Revised 2-92)", (EPA 450/2-78-027r, July 1986), including Supplement A and B (July 1987)~~ 40 CFR 51 Appendix W (Guideline on Air Quality Models).

~~(5-1-94)~~(11-13-98)T

a. Where an air quality model specified in the "Guideline on Air Quality Models (~~Revised~~)"; ~~including "Supplement A"~~ is inappropriate, the model may be modified or another model substituted, subject to written approval of the Administrator of the U.S. Environmental Protection Agency and public comment pursuant to Subsection 404.01.c.

~~(5-1-94)~~(11-13-98)T

b. Methods like those outlined in the U.S. Environmental Protection Agency's "Interim Procedures for Evaluating Air Quality Models (revised)" (1984) should be used to determine the comparability of air quality models.

(5-1-94)

04. Additional Information. Any additional information, plans, specifications, evidence or documents that the Department may require to make the determinations required under Sections 400 through 406 shall be furnished upon request.

(5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

404. PROCEDURE FOR ISSUING PERMITS.

01. General Procedures. General procedures for Tier II operating permits. (5-1-94)
- a. Within thirty (30) days after receipt of the application for a Tier II operating permit, the Department shall determine whether the application is complete or whether more information must be submitted and shall notify the applicant of its findings in writing. (5-1-94)
- b. Within sixty (60) days after the application is determined to be complete the Department shall: (5-1-94)
- i. Notify the applicant in writing of the approval, conditional approval, or denial of the application if an opportunity for public comment is not required pursuant to Subsection 404.01.c. The Department shall set forth reasons for any denial; or (5-1-94)
- ii. Issue a proposed approval, proposed conditional approval, or proposed denial. (5-1-94)
- c. An opportunity for public comment shall be provided on an application for any Tier II operating permit pursuant to Subsection 401.01, any application which uses fluid modeling or a field study to establish a good engineering practice stack height pursuant to Sections 510 through 516 and any other application which the Director determines an opportunity for public comment should be provided. (5-1-94)
- i. The Department's proposed action, together with the information submitted by the applicant and the Department's analysis of the information, shall be made available to the public in at least one (1) location in the region in which the stationary source or facility is to be located. (5-1-94)
- ii. The availability of such materials shall be made known by notice published in a newspaper of general circulation in the county(ies) in which the stationary source or facility is to be located. (5-1-94)
- iii. A copy of such notice shall be sent to the applicant and to appropriate federal, state and local agencies. (5-1-94)
- iv. There shall be a thirty (30) day period after initial publication for comment on the Department's proposed action, such comment to be made in writing to the Department. (5-1-94)
- v. After consideration of comments and any additional information submitted during the comment period, and within forty-five (45) days after initial publication of the notice, unless the Director deems that additional time is required to evaluate comments and information received, the Department shall notify the applicant in writing of approval, conditional approval, or denial of the permit. The Department shall set forth the reasons for any denial. (5-1-94)
- vi. All comments and additional information received during the comment period, together with the Department's final determination, shall be made available to the public at the same location as the preliminary determination. (5-1-94)
- d. A copy of each proposed and final permit will be sent to the U.S. Environmental Protection Agency. (11-13-98)T
02. Specific Procedures. Procedures for Tier II operating permits required by the Department under Subsection 401.03. (5-1-94)
- a. The Director shall send a notification to the proposed permittee by registered mail of his intention to issue a Tier II operating permit for the facility concerned. The notification shall contain a copy of the proposed permit in draft form stating the proposed emission standards and any required action, with corresponding dates, which must be taken by the proposed permittee in order to achieve or maintain compliance with the proposed Tier II operating permit. (5-1-94)
- b. The Department's proposed Tier II operating permit shall be made available to the public in at least one (1) location in the region in which the facility is located. The availability of such materials shall be made known

by notice published in a newspaper of general circulation in the county(ies) in which the facility is located. A copy of such notice shall be sent to the applicant. There shall be a thirty (30) day period after publication for comment on the Department's proposed Tier II operating permit. Such comment shall be made in writing to the Department. (5-1-94)

c. A public hearing will be scheduled to consider the standards and limitations contained in the proposed Tier II operating permit if the proposed permittee files a request therefor with the Department within ten (10) days of receipt of the notification, or if the Director determines that there is good cause to hold a hearing. (5-1-94)

d. After consideration of comments and any additional information submitted during the comment period or at any public hearing, the Director shall render a final decision upon the proposed Tier II operating permit within thirty (30) days of the close of the comment period or hearing. At this time the Director may adopt the entire Tier II operating permit as originally proposed or any part or modification thereof. (5-1-94)

e. All comments and additional information received during the comment period, together with the Department's final permit, shall be made available to the public at the same location as the proposed Tier II operating permit. (5-1-94)

f. ~~A copy of each permit will be sent to the U.S. Environmental Protection Agency.~~ (5-1-94)

03. Availability of Fluid Models and Field Studies. The Department will notify the public of the availability of any fluid model or field study used to establish a good engineering practice stack height and provide an opportunity for a public hearing before issuing a permit or setting an emission standard based thereon. (5-1-94)

04. Permit Revision or Renewal. The Director may approve a revision of any Tier II operating permit or renewal of any Tier II operating permit provided the stationary source or facility continues to meet all applicable requirements of Sections 400 through 406. Revised permits will be issued pursuant to procedures for issuing permits (Section 404), except that the requirements of Subsection 404.01.c. shall only apply if the permit revision results in an increase in allowable emissions or if deemed appropriate by the Director. Renewed Tier II operating permits will be issued pursuant to procedures for issuing permits (Section 404), except that the requirements of Subsections 404.01.c., and 404.02.b. through 404.02.e. shall only apply if the permit revision results in an increase in allowable emissions or if deemed appropriate by the Director. The expiration of a permit will not affect the operation of a stationary source or a facility during the administrative procedure period associated with the permit renewal process. (5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

440. REQUIREMENTS FOR ALTERNATIVE EMISSION LIMITS (BUBBLES).

The owner or operator of any facility may apply to the Department for a Tier I or Tier II operating permit (or a revision thereto) to authorize an alternative emission limit for any stationary source or emissions unit within the facility. The Department may issue or revise a Tier I operating permit or issue a significant modification to a Tier II operating permit which authorizes an alternative emission limit provided that all of the following are met:

~~(5-1-94)~~(11-13-98)T

01. Actual Emissions. There is no increase in actual emissions of the applicable regulated air pollutant at the facility. ~~(5-1-94)~~(11-13-98)T

02. Emission Reductions. All emission reductions satisfy the requirements for emission reduction credits (Section 460). (5-1-94)

03. Trade Requirements. All trades involve the same regulated air pollutant and demonstrate ambient equivalence as specified in Subsection 441.02. ~~(5-1-94)~~(11-13-98)T

04. Applicable Requirement Prohibition. No applicable Section of 40 CFR Part 60, 40 CFR Part 61, or

40 CFR Part 63, best available control technology requirement, lowest achievable emission rate requirement, or visual emission standard is exceeded. (5-1-94)

05. Actual HAP/TAP Emissions. The actual emissions of any hazardous air pollutant or any toxic air pollutant are not increased. (5-1-94)

06. Fugitive Dust Trades. Where the trade involves fugitive dust, the owner or operator shall undertake an adequate post-approval monitoring program to evaluate the ambient results of the controls. If the monitoring data indicate that the air quality effects are not equivalent, then: (5-1-94)

a. Further reductions must be proposed by the owner or operator; and/or (5-1-94)

b. The applicable emission standards in the operating permit will be adjusted by the Department; (5-1-94)

07. Compliance Schedule Extension. Any compliance schedule extension for a facility in a nonattainment area is consistent with reasonable further progress. (5-1-94)

08. EPA Approval. Approval of the U.S. Environmental Protection Agency, and where necessary the appropriate court, has been obtained for any individual stationary source or facility which is the subject of a federal enforcement action or outstanding enforcement order. (5-1-94)

441. DEMONSTRATION OF AMBIENT EQUIVALENCE.

The demonstration of ambient equivalence shall: (5-1-94)

01. VOC Trades. For trades involving volatile organic compounds, show that total emissions are not increased for the air basin in which the stationary source or facility is located. (5-1-94)

02. Other Trades. For trades involving any other regulated air pollutant, show through appropriate dispersion modeling that the trade will not cause a significant contribution at any modeled receptor. (5-1-94)(11-13-98)T

(BREAK IN CONTINUITY OF SECTIONS)

460. REQUIREMENTS FOR EMISSION REDUCTION CREDIT.

In order to be credited in a permit to construct, Tier I operating permit or Tier II operating permit any emission reduction must satisfy the following: (5-1-94)

01. Allowable Emissions. The proposed level of allowable emissions must be less than the actual emissions of the stationary source(s) or emission unit(s) providing the emission reduction credit. No emission reduction(s) can be credited for actual emissions which exceed the allowable emissions of the stationary source(s) or emission unit(s). (5-1-94)

02. Timing of Emission Reduction. In an attainment or unclassifiable area any emission reduction which occurs prior to the minor source baseline date must have been banked with the Department prior to the minor source baseline date in order to be credited; in a nonattainment area the emission reduction must occur after the base year of any control strategy for the particular regulated air pollutant. (5-1-94)(11-13-98)T

03. Emission Rate Calculation. The emission rate before and after the reduction must be calculated using the same method and averaging time and the characteristics necessary to evaluate any future use of the emission reduction credit must be described. (5-1-94)

04. Permit Issuance. A permit to construct, Tier I operating permit or Tier II operating permit shall be issued which establishes a new emission standard for the facility, or restricts the operating rate, hours of operation, or

the type or amount of material combusted, stored or processed for the stationary source(s) or emission unit(s) providing the emission reductions, ~~and~~ (5-1-94)(11-13-98)T

05. Imposed Reductions. Emission reductions imposed by local, state or federal regulations or permits shall not be allowed for emission reduction credits. (5-1-94)

06. Mobile Sources. The proposed level of allowable emissions must be less than the actual emissions of the mobile sources or stationary sources providing the emission reduction credit. Mobile source emission reduction credits shall be made state or federally enforceable by SIP revision. The form of the SIP revision may be a state or local regulation, operating permit condition, consent or enforcement order, or any mechanism available to the state that is enforceable. (11-13-98)T

461. REQUIREMENTS FOR BANKING EMISSION REDUCTION CREDITS (ERC'S).

01. Application to Bank an ERC. The owner or operator of any facility may apply to the Department for a Tier I or Tier II operating permit (or a revision thereto) to bank an emission reduction credit. An application to bank an emission reduction credit must be received by the Department no later than one (1) year after the reduction occurs. The Department may issue or revise such a Tier I or Tier II operating permit and a "Certificate of Ownership" for an emission reduction credit, provided that all emission reductions satisfy the requirements for emission reduction credits (Section 460). (5-1-94)

02. Banking Period. Emission reduction credits may be banked with the Department ~~for a period not to exceed ten (10) years from the date the reduction was made. During such period,~~ ~~the~~ banked emission reduction credits may be used for offsets, netting in accordance with the definition of net emissions increase at Section 007, or alternative emission limits (bubbles), or sold to other facilities. The use of banked emission reduction credits must satisfy the applicable requirements of the program in which they are proposed for use, including approval of a permit to construct or a Tier I or Tier II operating permit. (5-1-94)(11-13-98)T

03. Certificate of Ownership. Upon issuing or revising a Tier I or Tier II operating permit for an emission reduction credit, the Department will issue a "Certificate of Ownership" which will identify the owner of the credits, quantify the credited emission reduction and describe the characteristics of the emissions which were reduced and emissions unit(s) which previously emitted them. (5-1-94)

04. Adjustment by Department. If at any time the Department, or the owner or operator of a facility which has produced an emission reduction credit, finds that the actual reduction in emissions differs from that in the certificate of ownership, the Department will adjust the amount of banked emission reduction credits to reflect the actual emission reduction and issue a revised certificate of ownership. (5-1-94)

05. Proportional Discounts. If at any time the Department finds that additional emission reductions are necessary to attain and maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increment, banked emission reduction credits at facilities in the affected area may be proportionally discounted by an amount which will not exceed the percentage of emission reduction required for that area. (5-1-94)(11-13-98)T

06. Transfer of Ownership. Whenever the holder of a certificate of ownership for banked emission reduction credits, sells or otherwise transfers ownership of all or part of the banked credits, the holder shall submit the certificate of ownership to the Department. The Department will issue a revised certificate(s) of ownership which reflects the old and new holder(s) and amount(s) of banked emission reduction credits. (5-1-94)

07. Public Registry. The Department will maintain a public registry of all banked emissions reduction credits, indicating the current holder of each certificate of ownership and the amount and type of credited emissions. (5-1-94)

08. ~~Withdrawal of Unused ERC's. Banked emission reduction credits which are not used by the end of the ten (10) year period shall be withdrawn from possible use and credited towards improving air quality in the area affected by the facility.~~ (5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

511. APPLICABILITY.

The provisions of Sections 500 through 516 shall apply to existing, new, and modified stationary sources and facilities. The provisions of Sections 500 through 516 do not apply to stack heights in existence, or dispersion techniques implemented, on or before December 31, 1970, except where regulated air pollutant(s) are being emitted from such stacks or using such dispersion techniques by sources which were constructed, or reconstructed, or for which major modifications were carried out, after December 31, 1970. ~~(5-1-94)~~(11-13-98)T

512. DEFINITIONS.

For the purpose of Sections 500 through 516: (5-1-94)

01. Dispersion Technique. Any technique which attempts to affect the concentration of an regulated air pollutant in the ambient air by: ~~(5-1-94)~~(11-13-98)T

a. Using that portion of a stack which exceeds good engineering practice stack height; (5-1-94)

b. Varying the rate of emission of an regulated air pollutant according to atmospheric conditions or ambient concentrations of that regulated air pollutant; or ~~(5-1-94)~~(11-13-98)T

c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one (1) stack, or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This does not include the reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream; smoke management in agricultural or silvicultural prescribed burning programs; episodic restrictions on residential woodburning and open burning; techniques which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed five thousand (5,000) tons per year; or the merging of exhaust gas streams where: (5-1-94)

i. The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams; (5-1-94)

ii. After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of an regulated air pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the regulated air pollutant affected by such change in operation; or ~~(5-1-94)~~(11-13-98)T

iii. Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, the reviewing agency shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the reviewing agency shall deny credit for the effects of such merging in calculating the allowable emissions for the source. (5-1-94)

02. Excessive Concentration. For the purpose of determining good engineering practice stack height in a fluid modeling evaluation or field study as provided for in Subsection 512.03.c. "Excessive Concentration" means: (5-1-94)

a. For sources seeking credit for stack height exceeding that established under Subsection 512.03.b., a maximum ground level concentration due to emissions from a stack due in whole or in part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent (40%) in excess of the maximum concentration experienced in the absence of such effects, and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the prevention of significant deterioration program, an excessive concentration alternatively means a

maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent (40%) in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under Subsection 512.02.a., shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Department, an alternative emission rate shall be established in consultation with the source owner or operator.

(5-1-94)

b. For sources seeking credit after October 1, 1983, for increases in existing stack heights up to the heights established under Subsection 512.03.b., either:

(5-1-94)

i. A maximum ground-level concentration due in whole or in part to downwash, wakes or eddy effects as provided in Subsection 512.02.a., except that the emission rate specified by any applicable SIP or, in the absence of such a limit, the actual emission rate shall be used; or

(5-1-94)

ii. The actual presence of a local nuisance caused by the existing stack as determined by the authority administering the Department.

(5-1-94)

c. For sources seeking credit after January 12, 1979, for a stack height determined under Subsection 512.03.b., where the Department requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in Subsection 512.03.b., a maximum ground-level concentration due in whole or in part to downwash, wakes or eddy effects that is at least forty percent (40%) in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(5-1-94)

03. Good Engineering Practice (GEP) Stack Height. The greater of:

(5-1-94)

a. Sixty-five (65) meters, measured from the ground-level elevation at the base of the stack;

(5-1-94)

b. For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable preconstruction permits or approvals required,

$$H = 2.5S$$

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation. For all other stacks provided that the Department may require the use of a field study or fluid model to verify GEP stack height for the source,

$$H = S + 1.5L$$

where:

(5-1-94)

i. H = good engineering practice stack height measured from the ground-level elevation at the base of the stack.

(5-1-94)

ii. S = height of nearby structure(s) measured from the ground-level elevation at the base of the stack.

(5-1-94)

iii. L = lesser dimension, height or projected width, of nearby structure(s).

(5-1-94)

c. The height demonstrated by a fluid model or a field study approved by the Department which ensures that the emissions from a stack do not result in excessive concentrations of any regulated air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, structures, or terrain features.

~~(5-1-94)~~(11-13-98)T

04. Nearby Structures or Terrain Features. "Nearby" as applied to a specific structure or terrain feature under the definition of "good engineering practice stack height"; and

(5-1-94)

a. For purposes of applying the formulae provided under Subsection 512.03.b., means that distance up to five (5) times the lesser of the height or the width dimension of a structure, but not greater than one-half (1/2) mile (0.8 km); and (5-1-94)

b. For conducting demonstrations under Subsection 512.03.c., means not greater than one-half (0.5) mile (0.8 km), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten (10) times the maximum height of the feature, not to exceed two (2) miles if such feature achieves a height one-half (0.5) mile (0.8 km) from the stack that is at least forty percent (40%) of the GEP stack height determined by the formulae provided in Subsection 512.03.b., or twenty-six (26) meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack. (5-1-94)(11-13-98)T

05. Stack in Existence. The owner or operator had: (5-1-94)

a. Begun, or caused to begin, a continuous program of physical on-site construction of the stack; or (5-1-94)

b. Entered into binding agreements or contractual obligations which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time. (5-1-94)

513. REQUIREMENTS.

The required degree of emission control of any regulated air pollutant shall not be affected by the amount of any stack height that exceeds good engineering practice (GEP) or by any other dispersion technique. (5-1-94)(11-13-98)T

(BREAK IN CONTINUITY OF SECTIONS)

526. APPLICABILITY.

In any given year, Sections 525 through 538 shall apply to all major facilities, as defined in ~~Subsection 008-14.~~ Facilities, sources and emissions exempt under Section 301 are not required to register or pay fees. (3-7-95)(11-13-98)T

527. REGISTRATION.

Any person owning or operating a facility or source for which Sections 525 through 538 applies shall, by May 1, 1993 and each May 1 thereafter register with the Department and submit the following: (5-1-94)

01. Facility Information. The name, address, telephone number and location of the facility; (5-1-94)

02. Owner/Operator Information. The name, address and telephone numbers of the owners and operators; (5-1-94)

03. Facility Emission Units. The number and type of emission units present at the facility or the Tier I permit number for the facility; (12-1-97)T

04. Pollutant Registration. The emissions from the previous calendar year, or other twelve (12) month period requested by the registrant and approved by the Department for oxides of sulfur (SOx), oxides of nitrogen (NOx), particulate matter and volatile organic compounds (VOC) based on one (1) or more of the following methods chosen by the registrant: (12-1-97)T

a. Actual annual emissions; (12-1-97)T

b. An estimate of the actual annual emissions calculated using the unit's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year; (12-1-97)T

c. Allowable emissions based on permit limitations. (12-1-97)T

05. Radionuclide Registration. The amount of radionuclides from facilities regulated under 40 CFR Part 61, Subpart H, for which the registrant wishes to be registered to emit from each source in curies per year except that no amount in excess of or less than an existing permit, consent order, or judicial order will be allowed. (5-1-94)

06. Regulated Air Pollutant Registration Fee. A registration fee of thirty dollars (\$30) per ton for all regulated air pollutants listed in Subsection 527.04. The registration fee may be paid in two (2) installments as provided in Subsection 532.01. ~~(12-1-97)T~~(11-13-98)T

07. Radionuclide Registration Fee. A registration fee of five dollars per curie per year (\$5/curie/year) for facilities regulated under 40 CFR Part 61, Subpart H. The registration fee may be paid in two (2) installments as provided in Subsection 532.01. (5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

537. EXEMPTIONS.

01. Registration Fees. The following facilities or sources are exempt from paying registration fees under Sections 525 through 538: (5-1-94)

a. Facilities and sources specified by the Department, after public notice, as exempt from the payment of registration fees; and (5-1-94)

b. Country grain elevators. (5-1-94)

02. Registering and Paying Fees. The following facilities or sources are exempt from registering and paying registration fees under Sections 525 through 538: (5-1-94)

a. Facilities and sources specified by the Department, after public notice, as exempt from registration and the payment of registration fees; (12-1-97)T

b. Confined animal feeding operations; and (12-1-97)T

c. Insignificant activities identified in Subsection 317.01. (12-1-97)T

03. Paying Fees. The following emissions are exempt from registering and paying registration fees under Section 525 through 538: (3-7-95)L

a. Fugitive emissions from wood products. (3-7-95)L

b. Fugitive dust emissions, except facilities listed in Subsections 008.140.c.i. and 008.140.c.ii. Facilities listed in that section shall not be required to pay fees for fugitive dust emission in excess of one hundred (100) tons. ~~(12-1-97)T~~(11-13-98)T

(BREAK IN CONTINUITY OF SECTIONS)

553. EFFECT OF STAGES.

Once an episode stage is reached, emergency action corresponding to that stage will remain in effect until air quality measurements indicate that another stage (either lower or higher) has been attained. At such time, actions corresponding to the next stage will go into effect. This procedure will continue until the episode is terminated. The

air quality criteria used to define each of the episode stages for carbon monoxide, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide are specified in Section 556. The levels will be determined by the Department through its analysis of meteorological and ambient air quality monitoring data. (5-1-94)(11-13-98)T

554. CRITERIA FOR DEFINING EPISODE STAGES.

~~The air quality criteria defining each of these episode stages for particulate and/or SO₂ are presented in Emergency Episode Air Pollution Criteria. The twenty four (24) hour average ambient concentration of particulate matter, measured either in micrograms per cubic meter (ug/m³) or as a coefficient of haze (COHs), is presented along the horizontal axis. The vertical axis presents the twenty four (24) average ambient concentration of sulfur dioxide measured either in parts per million (ppm) or in micrograms per cubic meter (ug/m³).~~ (5-1-94)

554. -- 555. (RESERVED).

556. CRITERIA FOR DEFINING LEVELS WITHIN STAGES.

The air quality criteria defining each of these levels for carbon monoxide (CO), nitrogen dioxide (NO₂), and photochemical oxidants ozone (O₃), particles with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers (PM-10), and sulfur dioxide (SO₂) are: (5-1-94)(11-13-98)T

- 01. Stage 1 - Forecast. None. (5-1-94)
- 02. Stage 2 - Alert.

CO - 17 mg/m ³ (15 ppm)	8-hour average
NO _{x2} - 1130 ug/m ³ (0.6 ppm)	1-hour average
- 282 ug/m ³ (0.15 ppm)	24-hour average
O ₃ - 2400 ug/m ³ (0.42 ppm)	1-hour average
<u>PM-10 - 350 ug/m³</u>	<u>24-hour average</u>
<u>SO₂ - 800 ug/m³ (0.3 ppm)</u>	<u>24-hour average</u>

(5-1-94)(11-13-98)T

- 03. Stage 3 - Warning.

CO - 34 mg/m ³ (30 ppm)	8-hour average
NO _{x2} - 2260 ug/m ³ (1.2 ppm),	1-hour average
- 565 ug/m ³ (0.3 ppm)	24-hour average
O ₃ - 800 ug/m ³ (0.4 ppm)	1-hour average
<u>PM-10 - 420 ug/m³</u>	<u>24-hour average</u>
<u>SO₂ - 1600 ug/m³ (0.6 ppm)</u>	<u>24-hour average</u>

(5-1-94)(11-13-98)T

- 04. Stage 4 - Emergency.

CO - 46 mg/m ³ (40 ppm)	8-hour average
NO _{x2} - 3000 ug/m ³ (1.6 ppm)	1-hour average
- 750 ug/m ³ (0.4 ppm)	24-hour average

O3 - 1000 ug/m3 (0.65 ppm)	1-hour average
PM-10 - 500 ug.m3	24-hour average
SO ₂ - 2100 ug/m3 (0.8 ppm)	24-hour average

(5-1-94)(11-13-98)T

(BREAK IN CONTINUITY OF SECTIONS)

560. NOTIFICATION TO SOURCES.

The Department will assure that all significant sources of regulated air pollutant(s) are notified of the emergency stage by telephone or other appropriate means. (5-1-94)(11-13-98)T

561. GENERAL RULES.

All persons in the designated stricken area shall be governed by the following rules for each emergency episode stage. The Director may waive one (1) or more of the required measures at each episode stage if, on the basis of information available to him, he judges that a measure is an inappropriate response to the specific episode conditions which then exist. (5-1-94)

01. Stage 1 - Air Pollution Forecast. There shall be no open burning of any kind. (5-1-94)
02. Stage 2 - Alert. (5-1-94)
 - a. There shall be no open burning of any kind. (5-1-94)
 - b. The use of wigwam burners and incinerators for the disposal of any form of solid waste shall be prohibited. (5-1-94)
 - c. Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of 12:00 pm (noon) and 4:00 p.m. (5-1-94)
 - d. Commercial, industrial and institutional facilities utilizing coal or residual fuel oil are required to switch to natural gas or distillate oil if available. (5-1-94)
03. Stage 3 - Warning. (5-1-94)
 - a. There shall be no open burning of any kind. (5-1-94)
 - b. The use of wigwam burners and incinerators for the disposal of any form of solid waste or liquid waste shall be prohibited. (5-1-94)
 - c. Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of 12:00 pm (noon) and 4:00 p.m. (5-1-94)
 - d. Commercial, industrial and institutional facilities utilizing coal or residual fuel are required to either: (5-1-94)
 - i. Switch completely to natural gas or distillate oil; or (5-1-94)
 - ii. If these low sulfur fuels are not available, curtail the use of existing fuels to the extent possible without causing injury to persons or damage to equipment. (5-1-94)

04. Stage 4 - Emergency. This will be called only with specific concurrence of Governor. (5-1-94)
- a. There shall be no open burning of any kind. (5-1-94)
- b. The use of wigwam burners and incinerators for the disposal of any form of solid or liquid waste shall be prohibited. (5-1-94)
- c. All places of employment described below shall immediately cease operations: (5-1-94)
- i. All mining and quarrying operations; (5-1-94)
- ii. All construction work except that which must proceed to avoid injury to persons; (5-1-94)
- iii. All manufacturing establishments except those required to have in force an air pollution emergency plan; (5-1-94)
- iv. All wholesale trade establishments, i.e. places of business primarily engaged in selling merchandise to retailers or industrial, commercial, institutional or professional users, or to other wholesalers, or acting as agents in buying merchandise for or selling merchandise to such persons or companies except those engaged in the distribution of drugs, surgical supplies and food; (5-1-94)
- v. All offices of local, county and State government including authorities, joint meetings, and other public bodies excepting such agencies which are determined by the chief administrative officer of local, county, or State government authorities, joint meetings and other public bodies to be vital for public safety and welfare and the enforcement of the provisions of this order; (5-1-94)
- vi. All retail trade establishments except pharmacies, surgical supply distributors, and stores primarily engaged in the sale of food; (5-1-94)
- vii. Banks, credit agencies other than banks, securities and commodities brokers, dealers, exchanges and services; offices of insurance carriers, agents and brokers, real estate offices; (5-1-94)
- viii. Wholesale and retail laundries, laundry services and cleaning and dyeing establishments; photographic studios; beauty shops, barber shops, shoe repair shops; (5-1-94)
- ix. Advertising offices, consumer credit reporting, adjustment and collection agencies; duplicating, addressing, blueprinting; photocopying, mailing, mailing list and stenographic services; equipment rental services, commercial testing laboratories; (5-1-94)
- x. Automobile repair, automobile services, garages except those located adjacent to state or interstate highways; (5-1-94)
- xi. Establishments rendering amusement and recreational services including motion picture theaters; (5-1-94)
- xii. Elementary and secondary schools, colleges, universities, professional schools, junior colleges, vocational schools, and public and private libraries. (5-1-94)
- d. All commercial and manufacturing establishments not included in this order will institute such actions as will result in maximum reduction of regulated air pollutant(s) from their operation by ceasing, curtailing, or postponing operations which emit regulated air pollutants to the extent possible without causing injury to persons or damage to equipment. These actions include limiting boiler lancing or soot blowing operations for fuel burning equipment to between the hours of 12:00 pm (noon) and 4:00 p.m. ~~(5-1-94)~~(11-13-98)T
- e. When the emergency episode is declared for carbon monoxide, the use of motor vehicles is prohibited except in emergencies or with the approval of local or state police or the Department. (5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

575. AIR QUALITY STANDARDS AND AREA CLASSIFICATION.

Ambient Air Quality Standards. The purpose of Sections 575 through 587 is to establish air quality standards for the state of Idaho which define acceptable ambient concentrations of regulated air pollutants consistent with established air quality criteria. (5-1-94)(11-13-98)T

(BREAK IN CONTINUITY OF SECTIONS)

577. AMBIENT AIR QUALITY STANDARDS FOR SPECIFIC AIR POLLUTANTS.

01. Particulate Matter. PM-10 - particles with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers. (5-1-94)

a. Primary and Secondary Standards. Primary and secondary PM-10 standards are: (5-1-94)

i. Annual Standard. Fifty (50) micrograms per cubic meter, as an annual arithmetic mean -- never expected to be exceeded in any calendar year. (5-1-94)

ii. Twenty-four (24) Hour Standard. One hundred fifty (150) micrograms per cubic meter as a maximum twenty-four (24) hour concentration -- never expected to be exceeded more than once in any calendar year. (5-1-94)

b. Attainment and Expected Exceedance Determination. For the purpose of determining attainment of the primary and secondary PM-10 standards, expected exceedances shall be determined in accordance with Appendix K of 40 CFR Part 50. (5-1-94)

02. Sulfur Oxides (Sulfur Dioxide). (5-1-94)

a. Primary Standards. Primary sulfur dioxide air quality standards are: (5-1-94)

i. Annual Standard. Eighty (80) micrograms per cubic meter (0.03 ppm), as an annual arithmetic mean -- not to be exceeded in any calendar year. (5-1-94)

ii. Twenty-four (24) Hour Standard. Three hundred sixty-five (365) micrograms per cubic meter (0.14 ppm), as a maximum twenty-four (24) hour concentration -- not to be exceeded more than once in any calendar year. (5-1-94)

b. Secondary Standards. Secondary air quality standards are one thousand three hundred (1,300) micrograms per cubic meter (0.50 ppm), as a maximum three (3) hour concentration -- not to be exceeded more than once in any calendar year. (5-1-94)

~~e. Conflicting Standards. When more than one (1) standard is applicable, the interpretation that results in the most stringent standard shall apply. (5-1-94)~~

03. Ozone. Primary and secondary air quality standards are 0.12 ppm (two hundred thirty-five (235) micrograms per cubic meter) -- maximum one (1) hour concentration not expected to be exceeded more than once per year. (5-1-94)

04. Nitrogen Dioxide. Primary and secondary air quality standards are one hundred (100) micrograms per cubic meter (0.05 ppm) -- annual arithmetic mean. (5-1-94)

05. Carbon Monoxide. Primary and secondary air quality standards are: (5-1-94)
- a. Eight (8) Hour Standard. Ten (10) milligrams per cubic meter (9 ppm) -- maximum eight (8) hour concentration not to be exceeded more than once per year. (5-1-94)
 - b. One (1) Hour Standard. Forty (40) milligrams per cubic meter (35 ppm) -- maximum one (1) hour concentration not to be exceeded more than once per year. (5-1-94)
06. Fluorides. Primary and secondary air quality standards are those concentrations in the ambient air which result in a total fluoride content in vegetation used for feed and forage of no more than: (5-1-94)
- a. Annual Standard. Forty (40) ppm, dry basis -- annual arithmetic mean. (5-1-94)
 - b. Bimonthly Standard. Sixty (60) ppm, dry basis -- monthly concentration for two (2) consecutive months. (5-1-94)
 - c. Monthly Standard. Eighty (80) ppm, dry basis -- monthly concentration never to be exceeded. (5-1-94)
07. Lead. Primary and secondary standards for lead and its compounds, measured as elemental lead, are one and one-half (1.5) micrograms per cubic meter (1.5 ug/m³), as a quarterly arithmetic mean -- not to be exceeded in any quarter of any calendar year. (5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

579. BASELINES FOR PREVENTION OF SIGNIFICANT DETERIORATION.

01. Baseline Date(s). (5-1-94)
- a. Major Source Baseline Date. January 6, 1975 in the case of particulate matter and sulfur dioxide; February 8, 1988 in the case of nitrogen dioxide. (5-1-94)
 - b. ~~Minor Source Baseline Date. The earliest date after August 7, 1977 in the case of particulate matter and sulfur dioxide, and after February 8, 1988 in the case of nitrogen dioxide, that a major facility or major modification subject to PSD submits a complete application. A minor source baseline date is established for particulate matter, sulfur dioxide, or nitrogen dioxide if the area in which the new major facility or major modification would construct is designated attainment or unclassifiable under 42 U.S.C. Section 7407(d), and there would be a significant increase of the particular air pollutant. The earliest date after the trigger date on which a major stationary source or a major modification subject to prevention of significant deterioration (PSD) submits a complete application. The trigger date is:~~ (7-1-97)(11-13-98)T
 - i. In the case of particulate matter and sulfur dioxide, August 7, 1977; and (11-13-98)T
 - ii. In the case of nitrogen dioxide, February 8, 1988. (11-13-98)T
 - c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if: (11-13-98)T
 - i. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d) of the Clean Air Act for the pollutant on the date of its complete prevention of significant deterioration (PSD) application; and (11-13-98)T
 - ii. In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant. (11-13-98)T

d. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments, except that the Department may rescind any such minor source baseline date where it can be shown, to the satisfaction of the Department, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM-10 emissions. (11-13-98)T

02. Baseline Area. Any intrastate area designated as attainment or unclassifiable under 42 U.S.C. Section 7407(d), in which the major facility or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than a one (1) microgram per cubic meter (annual average) of the regulated air pollutant for which the minor source baseline date is established. ~~(5-1-94)~~(11-13-98)T

03. Baseline Concentration. The ambient concentration for a particular regulated air pollutant which exists in the applicable baseline area on the applicable minor source baseline date. ~~(5-1-94)~~(11-13-98)T

a. The baseline concentration shall represent: (5-1-94)

i. The actual emissions from sources in existence on the applicable minor source baseline date; and (5-1-94)

ii. The allowable emissions of major facilities and major modifications which commenced construction before the applicable major source baseline date, but were not in operation by the applicable minor source baseline date. (5-1-94)

b. The baseline concentration shall not include the actual emissions of new major facilities and major modifications which commenced construction on or after the applicable major source baseline date. (5-1-94)

580. CLASSIFICATION OF PREVENTION OF SIGNIFICANT DETERIORATION AREAS.

01. Restrictions on Area Classification. (5-1-94)

a. All of the following areas which were in existence on August 7, 1977, are Class I and may not be redesignated: (5-1-94)

i. International parks; (5-1-94)

ii. National wilderness areas which exceed five thousand (5,000) acres; (5-1-94)

iii. National memorial parks which exceed five thousand (5,000) acres; (5-1-94)

iv. National parks which exceed six thousand (6,000) acres. (5-1-94)

b. The following areas are Class II and may be redesignated only as Class I or II: (5-1-94)

i. National monuments, national primitive areas, national preserves, national recreational areas, national wild and scenic rivers, national wildlife refuges, and national lakeshores or seashores which exceed ten thousand (10,000) acres; or (5-1-94)

ii. National parks or national wilderness areas established after August 7, 1977, which exceed ten thousand (10,000) acres. (5-1-94)

c. All other areas in the State are Class II and may be redesignated Class I, II or III. (5-1-94)

02. Procedures for Redesignation of prevention of significant deterioration (PSD) Areas. ~~(5-1-94)~~

a. The Governor may submit to the U.S. Environmental Protection Agency a proposal to redesignate areas as a revision to the SIP. In preparing any such proposal the Department shall: ~~(5-1-94)~~(11-13-98)T

~~ia.~~ Consult with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation; (5-1-94)

~~ib.~~ Prepare a discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposal. This document will be made available for public inspection at least thirty (30) days prior to the public hearing on the proposed redesignation and the notice announcing the hearing will include notification of the availability of the document; (5-1-94)

~~ic.~~ Provide written notice to the appropriate Federal Land Manager of any federal lands proposed for redesignation and provide at least thirty (30) days for the Federal Land Manager to confer with the Department and to submit written comments and recommendations. If written comments and recommendations are submitted, the Department shall publish a list of any inconsistency between the proposed redesignation and the comments and recommendations, including the reasons for making a redesignation against the recommendation of the Federal Land Manager; (5-1-94)

~~id.~~ Notify other states, Indian governing bodies, and federal land managers whose land may be affected by the proposed redesignation at least thirty (30) days prior to the public hearing; (5-1-94)

~~ie.~~ For a redesignation to Class III: After consulting with the appropriate committees of the legislature, if it is in session, or the leadership of the legislature, if it is not in session, obtain specific approval by the Governor and by all general purpose units of local government representing a majority of the residents of the area to be redesignated; demonstrate that the redesignation would not cause, or contribute to, violations of any ambient air quality standard, or violations of PSD increments in any other area; and make available, for public inspection prior to the public hearing, any permit application and accompanying material for any major facility or major modification which could only be permitted if the area were designated as Class III; and (5-1-94)

~~if.~~ Hold at least one (1) public hearing on the proposed redesignation. (5-1-94)

~~b.~~ ~~An Indian governing body may submit to the U.S. Environmental Protection Agency a proposal to redesignate the lands within the exterior boundaries of an Indian reservation as a revision to the SIP. In preparing any such proposal the Indian governing body shall:~~ (5-1-94)

~~i.~~ Follow procedures equivalent to those in Subsection 580.02.a. except Subsection 580.02.a.v.; and (5-1-94)

~~ii.~~ Consult with the Governor and the governor(s) of any state(s) which the Indian reservation borders, prior to proposing the redesignation. (5-1-94)

581. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) INCREMENTS.

The purpose of Section 581 is to establish the allowable degree of deterioration for the areas within the State which have air quality better than the ambient standards. (5-1-94)

01. Class I, II and III Areas. In any area designated as Class I, II, or III, increases in any ambient concentration over the baseline concentration shall be limited to the following:
 :

CLASS AREAS	Maximum Allowable Increase (Micrograms per cubic meter)
CLASS I AREAS	
PM-10:	
Annual geometric arithmetic mean	4
Maximum twenty-four (24) hour average	8

CLASS AREAS	Maximum Allowable Increase (Micrograms per cubic meter)
Sulfur dioxide: Annual arithmetic mean	2
Maximum twenty-four (24) hour average	5
Maximum three (3) hour average	25
Nitrogen dioxide: Annual arithmetic mean	2.5
CLASS II AREAS	
Annual geometric arithmetic mean	17
Maximum twenty-four (24) hour average	30
Sulfur dioxide: Annual arithmetic mean	20
Maximum twenty-four (24) hour average	91
Maximum three (3) hour average	512
Nitrogen dioxide: Annual arithmetic mean	25
CLASS III AREAS	
PM-10: Annual geometric arithmetic mean	34
Maximum twenty-four (24) hour average	60
Sulfur dioxide: Annual arithmetic mean	40
Maximum twenty-four (24) hour average	182
Maximum three (3) hour average	700
Nitrogen dioxide: Annual arithmetic mean	50

~~(7-1-97)~~(11-13-98)T

02. Exceedances. For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location. (5-1-94)

03. Exclusions. The following concentrations shall be excluded in determining compliance with the maximum allowable increases: (5-1-94)

a. Concentrations attributable to the increase in emissions from facilities which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act, over the emissions from such facilities before the effective date of such order or plan; this shall not apply more than five (5) years after the effective date of such order or plan; (5-1-94)

b. Concentrations of PM-10 attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified facilities; (7-1-97)

c. The increase in concentrations attributable to new facilities outside the United States over the concentrations attributable to existing facilities which are included in the baseline concentration; and (5-1-94)

d. Concentrations attributable to the temporary increase in emissions of sulfur dioxide, nitrogen dioxide, or particulate matter from facilities which are affected by a revision to the SIP approved by the U.S. Environmental Protection Agency; this exclusion shall not exceed two (2) years unless a longer time is approved by the U.S. Environmental Protection Agency, is not renewable, and applies only to revisions which: (5-1-94)

i. Would not affect regulated air pollutant concentrations in a Class I area or an area where an applicable increment is known to be violated and would not cause or contribute to a violation of an ambient air quality standard; and (5-1-94)(11-13-98)T

ii. Require limitations to be in effect at the end of the approved time period which would ensure that the emissions from facilities affected by the revision would not exceed those concentrations occurring before the revision was approved. (5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

590. NEW SOURCE PERFORMANCE STANDARDS.

The owner or operator of any stationary source shall comply with 40 CFR Part 60 as applicable to the stationary source. The applicable definitions for this Section shall be the definitions set forth in 40 CFR Part 60.

(5-1-94)(11-13-98)T

(BREAK IN CONTINUITY OF SECTIONS)

625. VISIBLE EMISSIONS.

A person shall not discharge any air pollutant into the atmosphere from any point of emission for a period or periods aggregating more than three (3) minutes in any sixty (60) minute period which is greater than twenty percent (20%) opacity as determined by procedures contained in the Procedures Manual for Air Pollution Control, Section II (Evaluation of Visible Emissions Manual). (5-1-94)

- 01. Exemptions. The provisions of Section 625 shall not apply to: (5-1-94)
 - a. Kraft Process Lime Kilns, if operating prior to January 24, 1969; or (5-1-94)
 - b. Carbon Monoxide Flare Pits on Elemental Phosphorous Furnaces, if operating prior to January 24, 1969; or (5-1-94)
 - c. Liquid Phosphorous Loading Operations, if operating prior to January 24, 1969; or (5-1-94)
 - d. Wigwam Burners; or (5-1-94)
 - e. Kraft Process Recovery Furnaces. (5-1-94)
 - f. Calcining Operations Utilizing an Electrostatic Precipitator to Control Emissions, if operating prior to January 24, 1969. (5-1-94)

02. Standards for Exempted Sources. Except as provided in Section 626, for sources exempted from the provisions of Section 625, a person shall not discharge into the atmosphere from any point of emission, for any air pollutant for a period or periods aggregating more than three (3) minutes in any sixty (60) minute period which the average opacity over any six (6) minute period as calculated in 40 CFR Part 60, Appendix A, Reference Method 9 is greater than forty percent (40%) opacity, as determined by procedures contained in the Procedures Manual for Air Pollution Control, Section II (Evaluation of Visible Emissions Manual). (5-1-94)(11-13-98)T

03. Exception. The provisions of Section 625 shall not apply when the presence of uncombined water,

nitrogen oxides and/or chlorine gas are the only reason(s) for the failure of the emission to comply with the requirements of this rule. (5-1-94)

04. Test Methods and Procedures. The appropriate test method under this section shall be EPA Method 9 (contained in 40 CFR Part 60) with the method of calculating opacity exceedances altered as follows: (11-13-98)T

a. Opacity evaluations shall be conducted using forms available from the Department or similar forms approved by the Department. (11-13-98)T

b. Opacity shall be determined by counting the number of readings in excess of the percent opacity limitation, dividing this number by four (4) (each reading is deemed to represent fifteen (15) seconds) to find the number of minutes in excess of the percent opacity limitation. This method is described in the Department's Guidance Manual for Visible Emissions Observation. (11-13-98)T

c. Sources subject to New Source Performance Standards must calculate opacity as detailed above and as specified in 40 CFR Part 60. (11-13-98)T

(BREAK IN CONTINUITY OF SECTIONS)

675. FUEL BURNING EQUIPMENT -- PARTICULATE MATTER.

The purpose of Sections 675 through 680~~1~~ is to establish particulate matter emission standards for fuel burning equipment. (~~5-1-94~~)(11-13-98)T

(BREAK IN CONTINUITY OF SECTIONS)

679. AVERAGING PERIOD.

For purposes of Sections 675 through 680, emissions shall be averaged according to the following, whichever is the lesser period of time: (5-1-94)

01. One (1) Cycle. One (1) complete cycle of operation; or (5-1-94)

02. One (1) Hour. One (1) hour of operation representing worst-case conditions for the emission of regulated air contaminants pollutants. (~~5-1-94~~)(11-13-98)T

(BREAK IN CONTINUITY OF SECTIONS)

681. TEST METHODS AND PROCEDURES.

The appropriate test method under Sections 675 through 680 shall be EPA Method 5 contained in 40 CFR Part 60 or such comparable and equivalent method approved by the Department. Test methods and procedures shall also comply with Section 157. (11-13-98)T

681~~2~~ -- 699. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

700. PARTICULATE MATTER -- PROCESS WEIGHT LIMITATIONS.

01. Particulate Matter Emission Limitations. The purpose of Sections 700 through 703 is to establish

particulate matter emission limitations for process equipment. (5-1-94)(11-13-98)T

02. Minimum Allowable Emission. Notwithstanding the provisions of Sections 701 and 702, no source shall be required to meet an emission limit of less than one (1) pound per hour. (11-13-98)T

03. Averaging Period. For the purposes of Sections 701 through 703, emissions shall be averaged according to the following, whichever is the lesser period of time: (11-13-98)T

a. One (1) complete cycle of operation; or (11-13-98)T

b. One (1) hour of operation representing worst-case conditions for the emissions of particulate matter. (11-13-98)T

04. Test Methods and Procedures. The appropriate test method under Sections 700 through 703 shall be EPA Method 5 contained in 40 CFR Part 60 or such comparable and equivalent methods approved by the Department. Test methods and procedures shall comply with Section 157. (11-13-98)T

05. General Exemptions. The provisions of Sections 700 through 703 shall not apply to: (11-13-98)T

a. Any process subject to particulate emission standards under Sections 786, 821, 822, or 823. (11-13-98)T

b. Any process subject to a more restrictive particulate emission limitation established in a Tier I operating permit, a Tier II operating permit, or a permit to construct. (11-13-98)T

c. Any process subject to a more restrictive particulate emission standard under 40 CFR Parts 60 and 61. (11-13-98)T

d. Any process subject to a HAP standard under 40 CFR Parts 61 and 63, where a particulate matter standard is used as a surrogate for HAP. (11-13-98)T

e. Any process or source for which the Department has made a non-applicability determination in a permit that these limitations do not apply. (11-13-98)T

701. EMISSION LIMITATIONS:

No person shall cause, suffer, allow or permit the emission of particulate matter to the atmosphere from any process or process equipment in excess of the amount shown in the following Table for the process weight rate allocated to such a process or process equipment. The rate of emission shall be the total of all emission points from the source.

ALLOWABLE RATE OF EMISSION BASED ON PROCESS WEIGHT RATE					
Process Weight Rate	Rate of Emission		Process Weight Rate	Rate of Emission	
	Tons/Hr	Lb/Hr		Tons/Hr	Lb/Hr
100	0.05	0.551	16,000	8.00	16.5
200	0.10	0.877	18,000	9.00	17.9
400	0.20	1.40	20,000	10.00	19.2
600	0.30	1.83	30,000	15.00	25.2
800	0.40	2.22	40,000	20.00	30.5
1,000	0.50	2.58	50,000	25.00	35.4
1,500	0.75	3.38	60,000	30.00	40.0

ALLOWABLE RATE OF EMISSION BASED ON PROCESS WEIGHT RATE					
Process-Weight Rate	Rate-of Emission		Process-Weight Rate	Rate-of Emission	
	Lb/Hr	Tons/Hr		Lb/Hr	Tons/Hr
2,000	1.00	4.10	70,000	35.00	41.3
2,500	1.25	4.76	80,000	40.00	42.5
3,000	1.50	5.38	90,000	45.00	43.6
3,500	1.75	5.96	100,000	50.00	44.6
4,000	2.00	6.52	120,000	60.00	46.3
5,000	2.50	7.58	140,000	70.00	47.8
6,000	3.00	8.56	160,000	80.00	49.0
7,000	3.50	9.49	200,000	100.00	51.2
8,000	4.00	10.4	1,000,000	500.00	69.0
9,000	4.50	11.2	2,000,000 - 1,000.00	77.6	
10,000	5.00	12.0	6,000,000	3,000.00	92.7
12,000	6.00	13.6			

(5-1-94)

Interpolation of the data in this table for process weight rates up to sixty thousand (60,000) lb/hr shall be accomplished by use of the equation $E = 4.10 PO.67$, and interpolation and extrapolation of the data for process weight rates in excess of sixty thousand (60,000) lb/hr shall be accomplished by use of the equation:

$E = 55.0 PO.11 - 40$, where E = rate of emission in lb/hr and P = process weight rate in tons/hr. (5-1-94)

702~~1~~. PARTICULATE MATTER -- NEW EQUIPMENT PROCESS WEIGHT LIMITATIONS.

01. General Restrictions. A No person shall ~~not discharge~~ emit into the atmosphere from any ~~source~~ process or process equipment commencing operation on or after October 1, 1979, particulate matter in excess of the amount shown by the following equations, where E is the allowable emission from the entire source in pounds per hour, and PW is the process weight in pounds per hour. (5-1-94)(11-13-98)T

a. If PW is less than 9,250 pounds per hour,
~~0.60~~
 $E = .045 (PW) E = 0.045(PW)^{0.60}$ (5-1-94)(11-13-98)T

b. If PW is equal to or greater than 9,250 pounds per hour,
~~0.25~~
 $E = 1.10 (PW) E = 1.10(PW)^{0.25}$ (5-1-94)(11-13-98)T

02. Minimum Allowable Emission. Notwithstanding the provisions of Subsection 702.01, no source shall be required to meet an emission limit of less than one (1) pound per hour. (5-1-94)

03. Averaging Period. For purposes of Section 702, emissions shall be averaged according to the following, whichever is the lesser period of time: (5-1-94)

a. One (1) complete cycle of operation; or (5-1-94)

- b. ~~One (1) hour of operation representing worst-case conditions for the emission of air contaminants.~~
 (5-1-94)
042. Exemption. The provisions of Section 7021 shall not apply to fuel burning equipment.
 (5-1-94)(11-13-98)T
053. Emission Standards -- Table. The following table illustrates the emission standards set forth in Section 7021.
 (5-1-94)(11-13-98)T

PROCESS WEIGHT	ALLOWABLE EMISSIONS FROM ENTIRE SOURCE	PROCESS WEIGHT	EMISSIONS FROM ENTIRE SOURCE
lb/hr	lb/hr	lb/hr	lb/hr
175 or less	1	20,000	13.08
200	1.08	40,000	15.56
400	1.64	60,000	17.22
600	2.09	80,000	18.50
800	2.40	100,000	19.56
1,000	2.84	200,000	23.26
2,000	4.30	400,000	27.66
4,000	6.52	600,000	30.61
6,000	8.32	800,000	32.90
8,000	9.89	1,000,000	34.79
10,000	11.00	2,000,000	41.37

(5-1-94)

7032. PARTICULATE MATTER -- EXISTING EQUIPMENT PROCESS WEIGHT LIMITATIONS.

The provisions of Section 7032 shall become effective on January 1, 1981.
 (5-1-94)(11-13-98)T

01. General Restrictions. ~~A No person shall not discharge emit~~ into the atmosphere from any ~~source process or process equipment~~ operating prior to October 1, 1979, particulate matter in excess of the amount shown by the following equations, where E is the allowable emission from the entire source in pounds per hour, and PW is the process weight in pounds per hour:
 (5-1-94)(11-13-98)T

a. If PW is less than 17,000 pounds per hour,
~~0.60~~
 $E = 0.045 (PW)^{0.60}$; or
 (5-1-94)(11-13-98)T

b. If PW is equal to or greater than 17,000 pounds per hour,
~~0.27~~
 $E = 1.12 (PW)^{0.27}$.
 (5-1-94)(11-13-98)T

02. ~~Minimum Allowable Emission. Notwithstanding the provisions of Subsection 703.01, no source shall be required to meet an emission limit of less than one (1) pound per hour.~~
 (5-1-94)

~~03.~~ ~~Averaging Period. For purposes of Section 703, emissions shall be averaged according to the following, whichever is the lesser period of time:~~ ~~(5-1-94)~~

~~a. One (1) complete cycle of operation; or (5-1-94)~~

~~b. One (1) hour of operation representing worst case conditions for the emission of air contaminants. (5-1-94)~~

~~042.~~ Exemptions. The provisions of Section 7032 shall not apply to: ~~(5-1-94)~~(11-13-98)T

~~a. Fuel burning equipment; or (5-1-94)~~

~~b. Equipment used exclusively to dehydrate sugar beet pulp or alfalfa. (5-1-94)~~

~~053.~~ Emission Standards -- Table. The following table illustrates the emission standards set forth in Section 7032. ~~(5-1-94)~~(11-13-98)T

PROCESS WEIGHT	EMISSIONS FROM ENTIRE SOURCE	PROCESS WEIGHT	EMISSIONS FROM ENTIRE SOURCE
lb/hr	lb/hr	lb/hr	lb/hr
175 or less	1	20,000	16.24
200	1.08	40,000	19.58
400	1.64	60,000	21.84
600	2.09	80,000	23.61
800	2.48	100,000	25.07
1,000	2.84	200,000	30.23
2,000	4.30	400,000	36.46
4,000	6.52	600,000	40.67
6,000	8.32	800,000	43.96
8,000	9.89	1,000,000	46.69
10,000	11.30	2,000,000	56.30

703. PARTICULATE MATTER -- OTHER PROCESSES.

01. Other Processes. No person with processes exempt under Subsection 702.02.b. shall emit particulate matter to the atmosphere from any process or process equipment in excess of the amount shown in the following equations, where E is the total rate of emission from all emission points from the source in pounds per hour and P is the process weight rate in pounds per hour. (11-13-98)T

a. If P is less than sixty thousand (60,000) pounds per hour,
 $E = 0.02518(P)^{0.67}$ (11-13-98)T

b. If P is greater than or equal to sixty thousand (60,000) pounds per hour,
 $E = 23.84(P)^{0.11} - 40$ (11-13-98)T

02. Emission Standards -- Table. The following table illustrates the emission standards set forth in Section 703.

<u>ALLOWABLE RATE OF EMISSION BASED ON PROCESS WEIGHT RATE</u>			
<u>Process Weight Rate</u>	<u>Rate of Emission</u>	<u>Process Weight Rate</u>	<u>Rate of Emission</u>
<u>Lb/Hr</u>	<u>Lb/Hr</u>	<u>Lb/Hr</u>	<u>Lb/Hr</u>
<u>100</u>	<u>0.551</u>	<u>16,000</u>	<u>16.5</u>
<u>200</u>	<u>0.877</u>	<u>18,000</u>	<u>17.9</u>
<u>400</u>	<u>1.40</u>	<u>20,000</u>	<u>19.2</u>
<u>600</u>	<u>1.83</u>	<u>30,000</u>	<u>25.2</u>
<u>800</u>	<u>2.22</u>	<u>40,000</u>	<u>30.5</u>
<u>1,000</u>	<u>2.58</u>	<u>50,000</u>	<u>35.4</u>
<u>1,500</u>	<u>3.38</u>	<u>60,000</u>	<u>40.0</u>
<u>2,000</u>	<u>4.10</u>	<u>70,000</u>	<u>41.3</u>
<u>2,500</u>	<u>4.76</u>	<u>80,000</u>	<u>42.5</u>
<u>3,000</u>	<u>5.38</u>	<u>90,000</u>	<u>43.6</u>
<u>3,500</u>	<u>5.96</u>	<u>100,000</u>	<u>44.6</u>
<u>4,000</u>	<u>6.52</u>	<u>120,000</u>	<u>46.3</u>
<u>5,000</u>	<u>7.58</u>	<u>140,000</u>	<u>47.8</u>
<u>6,000</u>	<u>8.56</u>	<u>160,000</u>	<u>49.0</u>
<u>7,000</u>	<u>9.49</u>	<u>200,000</u>	<u>51.2</u>
<u>8,000</u>	<u>10.4</u>	<u>1,000,000</u>	<u>69.0</u>
<u>9,000</u>	<u>11.2</u>	<u>2,000,000</u>	<u>77.6</u>
<u>10,000</u>	<u>12.0</u>	<u>6,000,000</u>	<u>92.7</u>
<u>12,000</u>	<u>13.6</u>		

(11-13-98)T

(BREAK IN CONTINUITY OF SECTIONS)

725. RULES FOR SULFUR CONTENT OF FUELS.

The purpose of Sections 725 through 729 is to prevent excessive ground level concentrations of sulfur dioxide from fuel burning sources in Idaho. Fuel sulfur content shall be determined using ASTM method, D129-95 Standard Test for Sulfur in Petroleum Products (General Bomb Method). Test methods and procedures shall comply with Section 157. ~~(5-1-94)~~(11-13-98)T

(BREAK IN CONTINUITY OF SECTIONS)

786. EMISSION LIMITS.

01. General Restrictions. No person shall allow, suffer, cause or permit any incinerator to discharge more than two-tenths (0.2) pounds of particulates per one hundred (100) pounds of refuse burned. (5-1-94)(11-13-98)T

02. Averaging Period. For the purposes of Section 786, emissions shall be averaged according to the following, whichever is the lesser period of time: (11-13-98)T

a. One (1) complete cycle of operation; or (11-13-98)T

b. One (1) hour of operation representing worst-case conditions for the emissions of particulate matter. (11-13-98)T

03. Test Methods and Procedures. The appropriate test method under Sections 785 through 788 shall be EPA Method 5 contained in 40 CFR Part 60 or such comparable and equivalent methods approved by the Department. Test methods and procedures shall comply with Section 157. (11-13-98)T

(BREAK IN CONTINUITY OF SECTIONS)

~~788. -- 794. (RESERVED).~~

~~**795. RULES FOR CONTROL OF MOTOR VEHICLE EMISSIONS.**~~

~~The purpose of Sections 795 through 797 is to prevent excessive emission from motor vehicles. (5-1-94)~~

~~**796. POLLUTION CONTROL DEVICES.**~~

~~No person shall allow, suffer, cause or permit the removal, disconnection or disabling of a crankcase emission control system or device, exhaust emission control system or device, fuel evaporative emission control system or device, or any other system or device which has been installed on a motor vehicle in accordance with Federal laws and regulations while such motor vehicle is operating in the State (5-1-94)~~

~~**797. VISIBLE EMISSION STANDARDS.**~~

~~No person shall discharge into the ambient air any visible emission from any motor vehicle which is darker in shade than smoke designated as No. 2 on the Ringelmann Chart, or of such opacity as to obscure an observer's view to a degree greater than does smoke designated as No. 2 on the Ringelmann Smoke Chart (when used as a measure of opacity), except that this restriction shall not apply when condensing water vapor is the only reason for noncompliance. (5-1-94)~~

~~**798. -- 804. (RESERVED).**~~

(BREAK IN CONTINUITY OF SECTIONS)

824. MONITORING AND REPORTING.

01. Continuous Monitoring Requirements. Every kraft mill in the State shall install equipment for the continuous monitoring of TRS. (5-1-94)

a. The monitoring equipment shall be capable of determining compliance with these standards and shall be capable of continuous sampling and recording of the concentrations of TRS contaminants during a time

interval not greater than thirty (30) minutes. (5-1-94)

b. The sources monitored shall include, but are not limited to, the recovery furnace stacks and the lime kiln stacks. (5-1-94)

02. Particulate Sampling. Each mill shall sample the recovery furnace, lime kiln, and smelt tank for particulate emissions on a regularly scheduled basis in accordance with its sampling program as approved by the Department. The appropriate test method under Sections 821 through 823 shall be EPA Method 5 contained in 40 CFR Part 60 or such comparable and equivalent method approved by the Department. Test methods and procedures shall also comply with Section 157. (~~5-1-94~~)(11-13-98)T

03. Monitoring Program and Time Schedule Submittal. Each mill shall submit within sixty (60) days after the original effective date of Sections 815 through 826 a detailed monitoring program and time schedule for approval by the Department. The equipment shall be ordered within thirty (30) days after the monitoring program has been approved in writing by the Department. The equipment shall be placed in effective operation in accordance with the approved program within ninety (90) days after delivery. (5-1-94)

04. Monthly Quarterly Reporting Requirements. Unless otherwise authorized by the Department, data shall be reported by each mill at the end of each calendar ~~month~~ quarter, as follows: (~~5-1-94~~)(11-13-98)T

a. Daily average emission of TRS gases expressed in parts per million on a dry gas basis for each source included in the approved monitoring program. (5-1-94)

b. The number of hours each day that the emission of TRS gases from each recovery furnace stack exceeds emission standards and the maximum concentration of TRS measured each day. (5-1-94)

c. Emission of TRS gases in pounds of sulfur per equivalent air-dried ton of pulp processed in the kraft cycle on a ~~monthly~~ quarterly basis for each source included in the approved monitoring program. (~~5-1-94~~)(11-13-98)T

d. Emission of particulates in pounds per equivalent air-dried ton of pulp produced in the kraft cycle based upon sampling conducted in accordance with the approved monitoring program. (5-1-94)

e. Average daily equivalent kraft pulp production in air-dried tons. (5-1-94)

f. Other emission data as specified in the approved monitoring program. (5-1-94)

05. Semi-annual Reporting Requirements. Unless otherwise authorized by the Department, excess emissions data for emissions units covered by Section 820 shall be reported by each mill at the end of each semi-annual calendar period, as follows: (~~5-1-94~~)(11-13-98)T

a. Excess emissions for the semi-annual report required by Subsection 824.05 shall be defined as periods during which noncondensibles are not treated as required by Section 820. Periods of excess emissions reported under Subsection 824.05 shall not be a violation under Section 820 provided that the time of excess emissions (excluding periods of startup, shutdown, or malfunction) divided by the total process operating time in a semi-annual period does not exceed one percent (1%). (11-13-98)T

b. The total duration of excess emissions during the reporting period (recorded in hours). (11-13-98)T

c. The total duration of excess emissions expressed as a percent of the total source operating time during that reporting period, and (11-13-98)T

d. A breakdown of the total duration of excess emissions during the reporting period into those that are due to startup/shutdown, control equipment problems, process problems, other known causes, and other unknown causes. (11-13-98)T

056. Miscellaneous Reports. Each kraft mill shall furnish, upon request of the Department, such other

pertinent data as the Department may require to evaluate the mill's emission control program. Each mill shall immediately report abnormal mill operations which result in increased emissions of air pollutants, following procedures set forth in the approved monitoring program. (5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

846. ~~GENERAL RESTRICTIONS EMISSION LIMITS.~~

01. General Restrictions. No person shall allow, suffer, cause or permit the operation of any sulfuric acid plant which emits sulfur oxides into the atmosphere in excess of twenty-eight (28) lbs/ton of one hundred percent (100%) sulfuric acid produced. (5-1-94)(11-13-98)T

02. Averaging Period. For the purposes of Section 846, emissions shall be averaged according to the following, whichever is the lesser period of time: (11-13-98)T

a. One (1) complete cycle of operation; or (11-13-98)T

b. Three (3) hours of operation representing worst-case conditions for the emissions of sulfur oxide. (11-13-98)T

847. MONITORING AND TESTING.

~~The test methods and procedures used to determine compliance with Section 846 shall be those appearing in the Department's Procedure Manual or equivalent methods approved by the Department. The appropriate test method under Sections 845 through 848 shall be EPA Method 8 contained in 40 CFR Part 60 or such comparable and equivalent methods approved by the Department. Test methods and procedures shall comply with Section 157.~~ (5-1-94)(11-13-98)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 16-0101-9803

NOTICE OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Health and Welfare (Board) and is now pending review by the 1999 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-fifth Idaho Legislature unless prior to that date the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105 and 39-107, Idaho Code. In addition, certain changes in this rulemaking are mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, Volume 98-9, September 2, 1998, pages 38 through 40. The agency received no public comments on the proposal, and the rule has been adopted as initially proposed. The rulemaking record is maintained at the Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact Tim Teater at (208) 373-0502.

Dated this 6th day of January, 1999.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255

IDAPA 16
TITLE 01
Chapter 01

RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 98-9, September 2, 1998,
pages 38 through 40.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO
DOCKET NO. 16-0101-9901

NOTICE OF NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, and IDAPA 04.11.01.810 to 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation in an informal, negotiated rulemaking process prior to the initiation of formal rulemaking procedures by the agency. The negotiated rulemaking action is authorized by Section 39-105, Idaho Code. The formal rulemaking action is authorized by Sections 39-105 and 39-107, Idaho Code. In addition, the United States Environmental Protection Agency (EPA) has mandated that states implement federal emission guidelines to control the emissions of hospital/medical/infectious waste incinerators and certain municipal solid waste landfills. 40 CFR Part 60, Subparts Cc and WwW; 63 Fed. Reg. 32,743-53 (June 16, 1998) (codified at 40 CFR Part 60, Subparts Cc and WwW); 62 Fed. Reg. 48,348-91 (September 15, 1991) (codified at 40 CFR Part 60, Subparts Ce and Ec).

MEETING SCHEDULE: Persons interested in participating in the negotiated rulemaking process are encouraged to attend the following meetings.

For those interested in participating in negotiations concerning hospital/medical/infectious waste incinerators, a meeting has been scheduled as follows:

January 19, 1999 at 9 a.m. in Conference Room B
Division of Environmental Quality Building
1410 N. Hilton, Boise, Idaho

For those interested in participating in negotiations concerning municipal solid waste landfills, a meeting has been scheduled as follows:

January 21, 1999 at 9 a.m. in Conference Room B
Division of Environmental Quality Building
1410 N. Hilton, Boise, Idaho.

A preliminary draft of the rule may be obtained by contacting Tim Teater at (208) 373-0502. Interested persons may also participate in the negotiated rulemaking process by submitting written comments as provided below.

The meeting site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the meeting. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: Federal law requires states to implement EPA's emission guidelines to control the emissions of hospital/medical/infectious waste incinerators and certain municipal solid waste landfills. If Idaho does not adopt a state plan to implement the guidelines, EPA will promulgate a plan that will control these sources. This rulemaking will provide an enforceable mechanism in the state rules to implement and enforce the emission guidelines through adoption of an approvable state plan for certain municipal solid waste landfills and hospital/medical/infectious waste incinerators. While the state could adopt a federal plan by reference, it is in the best interest of the state, the public and the regulated community that Idaho adopt its own plan. A state plan will allow Idaho more control and flexibility in implementing EPA's emissions guidelines.

The principle issue involved is whether Idaho should adopt a state plan implementing the emissions guidelines or incorporate the federal plan by reference. This rulemaking will affect county landfill operators and hospital/medical/infectious waste incinerator operators.

The goal of the negotiated rulemaking process will be to develop by consensus the text of a recommended rule. If a consensus is reached, a draft of the rule, incorporating the consensus and any other appropriate information, recommendations, or materials, will be transmitted to the Department of Health and Welfare, Division of Environmental Quality (DEQ) for consideration and use in the formal rulemaking process. If a consensus is unable to be achieved on particular issues, the negotiated rulemaking process may result in a report specifying those areas on which consensus was and was not reached, together with arguments for and against positions advocated by various participants. At the conclusion of the negotiated rulemaking process, DEQ intends to present a rule to the Board of Health and Welfare (Board) for temporary adoption and, at the same time, commence formal rulemaking with the

publication of a proposed rule, using and taking into consideration the results of the negotiated rulemaking process. DEQ intends to present the rule to the Board for temporary adoption in June 1999 and initiate formal rulemaking with the publication of the temporary and proposed rule in the August 1999 issue of the Idaho Administrative Bulletin.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact Tim Teater at (208) 373-0502.

Anyone may submit written comments regarding this proposal to initiate negotiated rulemaking. All written comments must be received by the undersigned on or before January 27, 1999.

Dated this 6th day of January, 1999.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
Fax No. (208) 373-0481

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS
DOCKET NO. 16-0102-9802

NOTICE OF RESCISSION OF TEMPORARY RULE

EFFECTIVE DATE: This action is effective December 1, 1998.

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that the Board of Health and Welfare has rescinded the temporary rule adopted under this docket number in February 1998 (Idaho Administrative Bulletin, Volume 98-4, April 1, 1998, pages 7 and 8). The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

DESCRIPTIVE SUMMARY: The temporary rule has been rescinded because the U.S. Environmental Protection Agency has not yet withdrawn the National Toxics Rule (NTR) aquatic life criteria for the state of Idaho. Therefore, the state is still subject to the NTR for aquatic life and cannot, without federal action, adopt site-specific criteria for toxic pollutants. The proposed rule initiated under this docket has been vacated.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this action, contact Susan Burke at (208)373-0502.

Dated this 6th day of January, 1999.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS
DOCKET NO. 16-0102-9802
NOTICE OF VACATION OF RULEMAKING

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has vacated the rulemaking previously initiated under this docket number in the Idaho Administrative Bulletin, Volume 98-5, May 6, 1998, pages 136 and 137. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

DESCRIPTIVE SUMMARY: This docket is being vacated because the U.S. Environmental Protection Agency has not yet withdrawn the National Toxics Rule (NTR) aquatic life criteria for the state of Idaho. Therefore, the state is still subject to the NTR for aquatic life and cannot, without federal action, adopt site-specific criteria for toxic pollutants. The temporary rule adopted under this docket has been rescinded.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this vacation of rulemaking, contact Susan Burke at (208) 373-0502.

Dated this 6th day of January, 1999.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE

DOCKET NO. 16-0105-9801

NOTICE OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Health and Welfare (Board) and is now pending review by the 1999 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-fifth Idaho Legislature unless prior to that date the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-4401 et seq., and 39-5801 et seq., Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require the Idaho Department of Health and Welfare to adopt amendments to federal law as proposed under this docket.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, Volume 98-9, September 2, 1998, pages 41 through 47. The agency received no public comments on the proposal, and the rule has been adopted as initially proposed. The rulemaking record is maintained at the Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact John Brueck at (208) 373-0502.

Dated this 6th day of January, 1999.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255

IDAPA 16
TITLE 01
Chapter 05

RULES AND STANDARDS FOR HAZARDOUS WASTE

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 98-9, September 2, 1998,
pages 41 through 47.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1999 Idaho State Legislature for final adoption.**

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.01.21 - RULES GOVERNING THE PROTECTION AND DISCLOSURE OF RECORDS IN THE POSSESSION OF THE DIVISION OF ENVIRONMENTAL QUALITY

DOCKET NO. 16-0121-9801

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective December 1, 1998.

AUTHORITY: In compliance with Sections 67-5226(1) and 67-5221(1), Idaho Code, notice is hereby given that the Board of Health and Welfare (Board) has adopted a temporary rule and the Department of Health and Welfare, Division of Environmental Quality (Department) is commencing proposed rulemaking to promulgate a final rule. The action is authorized by Sections 9-342A(8), 39-105 and 39-107, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before January 20, 1999. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to adopt a new rule chapter titled "Rules Governing the Protection and Disclosure of Records in the Possession of the Division of Environmental Quality". The purpose of the rulemaking is to implement the provisions of HB 733, 1998 Session Law Chapter 125, as codified at Section 9-342A, Idaho Code. Those provisions amend the Idaho public records statute to ensure that Idaho law complies with the public disclosure and confidentiality requirements established in the federal Clean Air Act and the Resource Conservation and Recovery Act. The new statutory provisions also add language to the Idaho public records statute creating a duty on the part of employees of the Idaho Division of Environmental Quality (DEQ) to maintain the confidentiality of trade secrets submitted to DEQ and establishing a statutory procedure for the handling of information claimed to be a trade secret. The trade secrets language applies to all records submitted to DEQ under any program. The rules are consistent with the legislative goal of meeting federal disclosure requirements and, pursuant to the legislative direction codified as Section 9-342A(8), Idaho Code, formally adopt measures to further safeguard and protect against improper disclosure of trade secrets by DEQ, including procedures to train all DEQ employees on the proper handling of trade secrets. As a consequence of the statutory changes and this rulemaking, DEQ will conduct a review of the confidentiality provisions in the existing DEQ policies and guidance documents, and as a result of that review, may amend those internal DEQ documents.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Health and Welfare in June 1999 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2000 session of the Idaho Legislature.

NEGOTIATED RULEMAKING: The text of the rule has been drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 812 through 815. The negotiation was open to the public. Participants in the negotiation included representatives of several major Idaho businesses and the media. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Volume 98-6, June 3, 1998, page 26.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is necessary to comply with the deadline set forth by the Idaho Legislature in Section 9-342A(8), Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the temporary rule or the proposed rulemaking, contact Sue Richards at (208) 373-0502.

Anyone may submit written comments regarding this proposed rule. All written comments must be received by the undersigned on or before January 27, 1999.

Dated this 6th day of January, 1999.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
Fax No. (208)373-0481

THE FOLLOWING IS TEXT OF DOCKET NO. 16-0121-9801

IDAPA 16
TITLE 01
Chapter 21

**16.01.21 - RULES GOVERNING THE PROTECTION AND DISCLOSURE OF RECORDS
IN THE POSSESSION OF THE DIVISION OF ENVIRONMENTAL QUALITY**

000. LEGAL AUTHORITY.

The Idaho Legislature has given the Board of Health and Welfare the authority to promulgate these rules pursuant to Sections 9-342A(8), 39-105, and 39-107, Idaho Code. (12-1-98)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 16.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Division of Environmental Quality". (12-1-98)T

02. Scope. These rules adopt measures governing the disclosure and protection of records in the possession of the Idaho Department of Health and Welfare, Division of Environmental Quality, in accordance with Section 9-342A, Idaho Code. These rules affect members of the public submitting records to the Division of Environmental Quality as well as members of the public seeking access to Division of Environmental Quality records. (12-1-98)T

002. WRITTEN POLICIES AND GUIDANCE.

As described in Section 67-5201(16)(b)(iv), Idaho Code, the Idaho Department of Health and Welfare, Division of Environmental Quality may have written policies or guidance pertaining to the interpretation and implementation of these rules and the underlying statutes. Such written statements can be inspected and copied at cost at the Idaho Department of Health and Welfare, Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706. (12-1-98)T

003. APPEALS.

Persons may be entitled to appeal final agency actions under these rules pursuant to Sections 9-342A(6)(b) or 9-343, Idaho Code, or the Rules of the Department of Health and Welfare, IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (12-1-98)T

004. -- 009. (RESERVED).

010. DEFINITIONS AND ABBREVIATIONS.

01. Air Pollution Emission Data. The definition set forth in 40 CFR 2.301(a)(2), revised as of July 1, 1998, as follows with reference to any source of emission of any substance into the air: (12-1-98)T
- a. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing; (12-1-98)T
 - b. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source; and (12-1-98)T
 - c. A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source). (12-1-98)T
 - d. Notwithstanding Subsections 010.01.a., 010.01.b., and 010.01.c., the following information shall be considered to be emission data only to the extent necessary to allow DEQ to disclose publicly that a source is (or is not) in compliance with an applicable standard or limitation, or to allow DEQ to demonstrate the feasibility, practicability, or attainability (or lack thereof) of an existing or proposed standard or limitation: (12-1-98)T
 - i. Information concerning research, or the results of research, on any project, method, device, or installation (or any component thereof) which was produced, developed, installed, and used only for research purposes; and (12-1-98)T
 - ii. Information concerning any product, method, device, or installation (or any component thereof) designed and intended to be marketed or used commercially but not yet so marketed or used. (12-1-98)T
 - e. For purposes of the definition of emission data, standard or limitation means any emission standard or limitation established or publicly proposed pursuant to the CAA or any program administered by DEQ under authority delegated to the state of Idaho under the CAA. (12-1-98)T
02. CAA. The federal Clean Air Act, 42 U.S.C. Sections 7401, et seq. (12-1-98)T
03. CFR. The United States Code of Federal Regulations. (12-1-98)T
04. DEQ. The Idaho Department of Health and Welfare, Division of Environmental Quality. (12-1-98)T
05. EPA. The United States Environmental Protection Agency. (12-1-98)T
06. RCRA. The federal Resource Conservation and Recovery Act, 42 U.S.C., Sections 6901, et seq. (12-1-98)T
07. Trade Secret. The definition set forth in Section 9-342A(2), Idaho Code, which is information, including a formula, pattern, compilation, program, computer program, device, method, technique, or process, that: (12-1-98)T
- a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (12-1-98)T
 - b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. (12-1-98)T
 - c. The definition of trade secret includes commercial or financial information the disclosure of which could cause substantial competitive harm to the person from whom the record was obtained. (12-1-98)T

08. Trade Secret Claim. Notice by a person submitting a record to DEQ that a record or a portion of a record is claimed to be a trade secret subject to protection from public disclosure by DEQ. (12-1-98)T

011. RECORDS SUBJECT TO DISCLOSURE.

01. Trade Secrets Subject to Disclosure. Upon receipt of a request pursuant to Chapter 3, Title 9, Idaho Code, or to comply with public notice, comment or hearing requirements established in state statutes or rules implementing programs delegated or authorized to the state of Idaho under the CAA or RCRA, and after DEQ has followed the procedures set forth in Section 9-342A(6), Idaho Code, for information subject to a trade secret claim, DEQ shall disclose: (12-1-98)T

a. Air pollution emission data required to be submitted to or obtained by DEQ pursuant the CAA or any program administered by DEQ under authority delegated to the state of Idaho under the CAA; (12-1-98)T

b. The contents of any Title V operating permit; and (12-1-98)T

c. The name and address of any applicant or permittee for hazardous waste treatment, storage, or disposal facility permit pursuant to Chapter 44, Title 39, Idaho Code. (12-1-98)T

02. Other Program Records. All DEQ records not listed in Subsection 011.01 and required to be submitted to DEQ, or which DEQ could compel the submission of, under the state statutes and rules implementing programs delegated or authorized to the state of Idaho under the CAA or RCRA, shall be made available for public inspection and copying except to the extent to which such records are a trade secret in which case the record shall be kept confidential according to the procedures set forth in Section 9-342A, Idaho Code, and these rules. (12-1-98)T

012. NOTICE OF TRADE SECRET CLAIM.

01. Notice To Be Included in Submittals. (12-1-98)T

a. It shall be the responsibility of any person providing a record to DEQ to give notice of the existence of a trade secret claim on each page or other portion of information at the time of submittal by the placement of a stamped, typed, or other notation employing such language as "trade secret," "proprietary," or "confidential". Such person shall have the burden of demonstrating that the information is a trade secret subject to protection from disclosure by DEQ. (12-1-98)T

b. To expedite any subsequent trade secret determinations, persons making a claim are encouraged to include supporting information substantiating a trade secret claim with the original submittal. (12-1-98)T

02. Portions of Records. If a portion of a record or a portion of a page is non-confidential and the other portion is subject to a trade secret claim, the two (2) portions shall be clearly identified by the person making the claim at the time of submittal. Information for which a trade secret claim is made is encouraged to be submitted separately if feasible and if such segregation would facilitate identification and handling by DEQ. (12-1-98)T

03. Absence of Trade Secret Claim. (12-1-98)T

a. If no trade secret claim accompanies a record received by DEQ, the record is subject to disclosure to the public by DEQ in accordance with applicable state law and policy without further notice to the person making the submittal. (12-1-98)T

b. If a person has not asserted a trade secret claim for a record for which it might be expected to assert a trade secret claim, DEQ may inquire whether the person asserts a trade secret claim covering the information. (12-1-98)T

04. Subsequent Trade Secret Claim. If a trade secret claim covering a record or portion of a record is made after the information is initially submitted to DEQ, DEQ will make such efforts as are practicable in light of prior disclosure, to associate the late trade secret claim with the previously submitted record. (12-1-98)T

05. Handling of Records. DEQ records, or portions of records, for which a trade secret claim has been asserted shall be treated as being entitled to confidential treatment until there has been a determination in accordance with the procedures set out in Section 9-342A(6), Idaho Code, that the information is not entitled to confidential treatment. (12-1-98)T

013. NOTIFICATION TO PERSON REQUESTING DISCLOSURE.

At the time that DEQ provides a request for substantiation to a person making a trade secret claim, DEQ may furnish a notice to the person whose request for release of the record is pending that the information requested may be entitled to protection from public disclosure under these rules and Section 9-342A, Idaho Code, that further inquiry by DEQ is required, that the person making the request will be notified when a final confidentiality determination is made, and the approximate time frame within which the determination will occur. (12-1-98)T

014. REQUEST FOR SUBSTANTIATION.

01. Timing of Determination. Even though no request for disclosure of the record has been received, DEQ may at any time request substantiation of a trade secret claim. (12-1-98)T

02. Preliminary Determination. If request is received by DEQ from a member of the public seeking disclosure of information subject to a trade secret claim or if DEQ determines that information subject to a trade secret claim may be disclosed pursuant to public notice, comment or hearing, and the DEQ administrator determines such information may be subject to disclosure, DEQ shall send a written request for substantiation to the person making the claim pursuant to Section 9-342A(6), Idaho Code. The request shall inform the person that a public records request is pending or that a public notice, comment or hearing is pending. (12-1-98)T

03. Contents of Request for Substantiation. The written request for substantiation shall invite the person making the trade secret claim to comment on the following points: (12-1-98)T

a. The specific portions of the record, including portions of each page, which are alleged to be entitled to confidential treatment; (12-1-98)T

b. Measures taken by the person making the claim to guard against nonconsensual disclosure of the information to others, and the means by which such measures will be continued in the future; (12-1-98)T

c. The extent to which the information has been consensually disclosed to others and the precautions taken in connection therewith; (12-1-98)T

d. Pertinent confidentiality determinations, if any, by EPA or other state and federal agencies; (12-1-98)T

e. Any relevant facts which would support the claim that the information meets the definition of "trade secret" set out in Section 010 above; and (12-1-98)T

f. If appropriate, the reason that the information is not required to be disclosed by state or federal statute including Section 9-342A(1), Idaho Code. (12-1-98)T

04. Submittal of Substantiation Response. A response to a request for substantiation of a trade secret claim shall be submitted to DEQ by the person claiming the trade secret protection within ten (10) working days after receipt of the request for substantiation or the information subject to the claim shall be disclosed without further notice. (12-1-98)T

05. Confidentiality of Substantiation Response. A response to a request for substantiation of a trade secret claim may itself contain information subject to protection from public disclosure. (12-1-98)T

015. FINAL DETERMINATION OF TRADE SECRET CLAIM.

01. Final Determination. Within three (3) working days after receipt of the business's timely response to a request for substantiation, the DEQ administrator shall make a final determination concerning whether the

information is protected from public disclosure pursuant to Section 9-342A, Idaho Code, and shall notify the person requesting the information and the person asserting the trade secret claim of the determination. (12-1-98)T

02. Criteria for Determination. In making a final determination whether a record or portion of a record is a trade secret, the DEQ administrator shall consider whether: (12-1-98)T

a. A trade secret claim has been asserted which has not expired by its terms, nor been waived or withdrawn; (12-1-98)T

b. The person has satisfactorily shown that reasonable measures to protect the confidentiality of the information have been taken, and that such measures will continue to be taken; (12-1-98)T

c. The information is not, and has not been, reasonably obtainable without the business's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding); (12-1-98)T

d. A state or federal statute does not specifically require disclosure of the information; and (12-1-98)T

e. The person has satisfactorily shown that the information meets the definition of "trade secret" set out in Section 010 above. (12-1-98)T

016. DISCLOSURE OF RECORDS TO CERTAIN PERSONS UNDER A CONTINUING CLAIM.

01. Situations for a Continuing Claim. DEQ may disclose a record which is a trade secret or which is subject to a trade secret claim under a continuing claim in accordance with Section 9-342A(4), Idaho Code, as follows: (12-1-98)T

a. To any officer, employee, or authorized representative of the state or the United States as necessary to carry out the provisions of state or federal law, or when relevant to any proceeding thereunder; (12-1-98)T

b. As determined necessary by the DEQ administrator to protect the public health and safety from imminent and substantial endangerment; and (12-1-98)T

c. As required by state or federal law including for discovery in the normal course of judicial or administrative adjudicatory proceedings, subject to the law and rules of evidence and of discovery governing such proceedings. (12-1-98)T

02. Notice of a Continuing Claim. (12-1-98)T

a. DEQ shall give notice of a continuing trade secret claim by noting its existence in a cover letter, or by other effective means if a cover letter is impractical, at the time the record is disclosed. (12-1-98)T

b. DEQ shall notify the person receiving the information subject to a continuing trade secret claim that DEQ's disclosure does not waive the claim nor authorize any further disclosure by the person receiving the record. (12-1-98)T

c. DEQ shall disclose a record under Subsections 016.01.a. and 016.01.b. only if the person receiving the record agrees in writing to exercise all means legally available to protect the relevant record or portion of the record from further disclosure. (12-1-98)T

03. Record of Disclosures. DEQ shall adopt a procedure to maintain a record of any disclosures of records or portion of records subject to a continuing trade secret claim. (12-1-98)T

017. SAFEGUARDING OF TRADE SECRET INFORMATION.

01. Prohibition on Disclosure. No DEQ officer or employee may disclose any information subject to a trade secret claim except as specifically mandated by statute. (12-1-98)T

02. Dissemination within DEQ. Access to information subject to a trade secret claim by DEQ employees, contractors, or other representatives shall be limited to access required to carry out the person's duties on behalf of DEQ. (12-1-98)T

03. Segregation of Information. Any information subject to a trade secret claim and received by DEQ after the effective date of these rules shall be placed in a clearly marked, confidential section of the relevant file. (12-1-98)T

04. Training. DEQ shall train all new employees, and periodically train existing employees, in the proper filing, tracking and physical handling of records subject to a trade secret claim, and in the procedures established by these rules, Section 9-342A, Idaho Code, and any relevant policies adopted by DEQ. Training shall be as frequent and extensive as deemed necessary by the DEQ administrator. (12-1-98)T

018. -- 999. (RESERVED).

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13.01.10 - IMPORTATION, RELEASE, SALE, OR SALVAGE OF WILDLIFE

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