PENDING FEE RULES

COMMITTEE RULES
REVIEW BOOK

Submitted for Review Before

Senate Resources & Environment Committee

67th Idaho Legislature
First Regular Session – 2023

Prepared by:

Office of the Administrative Rules Coordinator
Division of Financial Management

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SENATE RESOURCES & ENVIRONMENT COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2023 Legislative Session

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13.01.02 – RULES GOVERNING MANDATORY EDUCATION, MENTORED HUNTING, AND SHOOTING RANGES

DOCKET NO. 13-0102-2201 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis (CBA)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 36-103, 36-104, 36-401, 36-409, 36-412, 36-418 and 36-1508.

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

This rule is being presented for authorization as part of the agency's plan to review each rule chapter every five years, consistent with the Governor's Executive Order 2020-01: Zero-Based Regulation. The fee portion of the rulemaking relates to fees for hunter, archery, and trapping education, and fees related to Commission-owned or Department-operated shooting ranges. Changes to current rule include fees the Department may charge for use of Commission/Department shooting ranges and for goods and services associated with these ranges. The non-fee portion of the rulemaking relates to criteria for mandatory hunting, archery, trapping, and wolf-specific trapping education; and allowances for mentored hunting and the hunter passport program for first-time hunters.

No one expressed interest in negotiated rulemaking, and no one asked for public hearing or commented on this rulemaking. The agency conducted a public input survey regarding mountain goat gender identification training in April 2022. There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 5, 2022 Idaho Administrative Bulletin, Vol. 22-10, pages 266-268.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Sections 36-412 and 36-418, Idaho Code.

Under this rulemaking the Department would continue to charge a fee of $8.00 for each course enrollment in hunter, archery, trapper, or wolf trapper education. This fee has been in effect since March 24, 2017. This fee rule would also allow the Director to set a daily use fee for Commission-owned or Department-operated shooting ranges, not to exceed $10.00, and allows IDFG range program managers to set and charge reasonable fees for goods and services associated with these ranges.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year:

There is no fiscal impact to the general fund associated with this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Amber Worthington, Deputy Director, at 208-334-3771.

DATED this 18th day of November, 2022.

Amber Worthington
Deputy Director
Idaho Department of Fish and Game
600 S. Walnut Street

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Fax (208) 334-4885
Email: rules@idfg.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking. The action is authorized pursuant to Sections 36-103, 36-104, 36-401, 36-409, 36-412, 36-418, and 36-1508, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2022.

Any hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule is being presented for authorization as part of the IDFG plan to review each rule chapter every five years. Consistent with the Governor's Executive Order 2020-01: Zero-Based Regulation, the agency has revised current rule language to improve clarity and reduce duplication.

The fee portion of the rulemaking relates to fees the Department charges for hunter, archery, and trapping education, and fees related to Commission-owned or Department-operated shooting ranges. Changes to current rule include fees the Department may charge for use of Commission/Department shooting ranges and for goods and services associated with these ranges.

The non-fee portion of the rulemaking relates to criteria for mandatory hunting, archery, trapping, and wolf-specific trapping education; and allowances for mentored hunting and the hunter passport program for first-time hunters. Proposed changes from current rules allow parental acknowledgment for in-person classroom instruction of their children under 18 years of age, instead of a requirement for the parent or person designated by the parent to attend mandatory education instruction. Proposed changes include a requirement for mountain goat identification (via test available online) to obtain a mountain goat tag, to support future hunt opportunity by reducing take of female (nanny) goats during hunts.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

Under this rulemaking the Department would continue to charge a fee of $8.00 for each course enrollment in hunter, archery, trapper, or wolf trapper education. This fee has been in effect since March 24, 2017. This fee rule would also allow the Director to set a daily use fee for Commission-owned or Department-operated shooting ranges, not to exceed $10.00, and allows IDFG range program managers to set and charge reasonable fees for goods and services associated with these ranges.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking:

There is no fiscal impact to the general fund associated with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 6, 2022, Idaho Administrative Bulletin, Vol. 22-4, page 17 under Docket No. 13-0102-2201. The Department held a public meeting for negotiated rulemaking on May 16, 2022. No persons identified themselves as interested in participating in negotiated rulemaking.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not Applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Amber Worthington, Deputy Director, at 208-334-3771.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2022.

DATED this 29th day of August, 2022.

THE FOLLOWING IS THE TEXT OF ZBR FEE DOCKET NO. 13-0102-2201

13.01.02 – RULES GOVERNING MANDATORY EDUCATION, MENTORED HUNTING, AND SHOOTING RANGES

000. LEGAL AUTHORITY.
Sections 36-103, 36-104, 36-401, 36-409, 36-412, 36-418 and 36-1508. ( )

001. SCOPE.
These rules govern hunting, archery, and trapping education, mentored hunting and shooting ranges. ( )

002. – 009. (RESERVED)

010. DEFINITIONS.

01. Accompany(ied). Close enough for conversation without shouting or using electronic devices. ( )

02. Mentee. Holder of a Hunting Passport or Nonresident Junior Mentored License. ( )

011. – 100. (RESERVED)

101. HUNTING PASSPORT.

01. Hunting Passport. No person holding a Hunting Passport may hunt wildlife unless accompanied by an eligible mentor. Hunting Passports are licenses for carrying and exhibition purposes under Section 36-1201, Idaho Code, and authorize holders to hunt without mandatory hunter education. Hunting Passports expire December 31 of the year for which they are valid. ( )

02. Passport Eligibility. ( )

a. Only persons eight (8) years of age or older, who have not previously possessed a Hunting Passport, hunting license, or equivalent license in any state or country, may possess a Hunting Passport. Youths may

possess additional Hunting Passport(s) each year until reaching ten (10) years of age. ( )

b. Hunting passport holders at least ten (10) years of age are eligible to obtain general hunt big game tags available for their residency. ( )

c. Hunting Passport holders are not eligible to apply for controlled hunts, except as designated by landowners for landowner permission or depredation hunts. ( )

d. Hunting Passport holders under eighteen (18) years of age are eligible to participate in youth-only seasons. ( )

102. HUNTING MENTOR.

01. Eligibility. No person may be a mentor unless they are eighteen (18) years of age or older and have a valid Idaho hunting license. A mentor may accompany no more than two (2) mentees at once. ( )

02. Game Tag. Mentees may not hunt for species requiring game tag(s) under Section 36-409, Idaho Code, unless the mentee has a valid tag for the hunt and the mentor has a tag for that species valid somewhere in Idaho during that calendar year. ( )

03. Mentor Hunting. Mentors may hunt while serving as mentors if eligible for that hunt. ( )

103. – 199. (RESERVED)

200. HUNTER AND ARCHERY EDUCATION.
Certification of hunter/archery education to comply with Section 36-411, Idaho Code, means presentation of Department-issued or equivalent certification. "Equivalent certification" for hunter/archery education means completed instruction by an authorized agency or association including firearms/archery safety, wildlife management and laws, hunter ethics, first aid, survival, and practical experience in handling and shooting firearms/archery equipment. ( )

201. TRAPPER EDUCATION.
Any person who did not possess an Idaho trapping license before July 1, 2011, is ineligible to obtain a trapping license unless they present Department-issued or equivalent certification of trapper education. "Equivalent certification" means completed instruction by an authorized agency or association including trapping safety, wildlife management and laws, non-target species avoidance techniques, trapper ethics and practical experience with trapping equipment. Wolf-only trapping education is not equivalent certification. ( )

202. WOLF TRAPPER EDUCATION.
No person may trap for wolves without successfully completing a Department-held wolf trapping education class. ( )

203. – 209. (RESERVED)

210. PARENTAL PERMISSION.
Students under age eighteen (18) who are not emancipated may only attend in-person Department mandatory education instruction with signed permission of a parent or legal guardian. ( )

211. – 219. (RESERVED)

220. MOUNTAIN GOAT IDENTIFICATION.
No person may obtain a mountain goat tag unless they have completed the Department's online mountain goat gender identification test with a passing score (eighty percent (80%) or higher). One may take this test repeatedly to pass. ( )

221. – 249. (RESERVED)

250. EDUCATION FEES.
The Department will charge eight dollars ($8) for each course enrollment in hunter, archery, trapper, or wolf trapper education. ( )

251. –299. (RESERVED)

300. SHOOTING RANGE FEES.

01. Fee Schedule. The Director may set a daily use fee for Commission-owned or Department-operated shooting ranges, not to exceed ten dollars ($10.00), which a person must pay to use the range. ( )

02. Goods and Services. Department range program managers have authority to set and charge reasonable fees for goods available for resale, equipment rentals, and services provided to enhance user experience unique to the range. ( )

301. –999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.17 – RULES GOVERNING LEASES ON STATE-OWNED NAVIGABLE WATERWAYS

DOCKET NO. 20-0317-2201 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis (CBA)

EFFECTIVE DATE: This rule has been adopted by the agency and the Idaho State Board of Land Commissioners and is now pending review by the 2023 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 58-104(6), Idaho Code.

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

Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2022 with the goal of simplifying the rules for increased clarity and ease of use. The overall regulatory burden has been reduced by decreasing both total word count and the number of restrictive words in the new rule chapter. Application and assignment fees have been increased to cover the costs of reviewing applications. Late payment policy is updated, and payment extensions are eliminated. Appraisals, if needed, will now be paid for by the applicant and will not be performed by qualified Department staff.

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 7, 2022, Idaho Administrative Bulletin, Vol. 22-9, pages 209-216. An unofficial strikethrough version of the proposed rule, which shows the changes made through the rulemaking process, is available on the agency website at https://www.idl.idaho.gov/rulemaking/docket-20-0317-2201/.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased.

The $150 application fee in place since 2008 is increased to $425. This fee is being imposed pursuant to Sections 58-104, 58-127 and 58-603, Idaho Code. The $150 assignment fee is increased to $200. This fee is being imposed pursuant to Sections 58-104 and 58-127, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Eric Wilson at (208) 334-0261 or ewilson@idl.idaho.gov.

DATED this 18th day October, 2022.

Eric Wilson, Resource Protection and Assistance Bureau Chief
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THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Idaho Department of Lands initiated this rulemaking in compliance with Executive Order 2020-01: Zero-Based Regulation. This rule chapter is scheduled for a comprehensive review in 2022 with the goal of simplifying and streamlining the rules for increased clarity and ease of use.

The overall regulatory burden has been reduced by decreasing both total word count (-17%) and the number of restrictive words (-23%) in the proposed rule. Application and assignment fees have been increased to cover the costs of reviewing applications. Late payment policy is updated, and payment extensions are eliminated. Appraisals, if needed, will now be paid for by the applicant and will not be performed by qualified Department staff.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

The $150 application fee in place since 2008 is increased to $425. This fee is being imposed pursuant to Sections 58-104, 58-127 and 58-603, Idaho Code. The $150 assignment fee is increased to $200. This fee is being imposed pursuant to Sections 58-104 and 58-127, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2022, Idaho Administrative Bulletin, Vol. 22-4, pages 39–40.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Eric Wilson at (208) 334-0261 or ewilson@idl.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2022.

DATED this 7th day of September, 2022.

THE FOLLOWING IS THE TEXT OF ZBR FEE DOCKET NO. 20-0317-2201

20.03.17 – RULES GOVERNING LEASES ON STATE-OWNED NAVIGABLE WATERWAYS

000. LEGAL AUTHORITY.
This Chapter is adopted under the legal authorities of Title 58, Chapter 1, Idaho Code, Sections 58-104(6), 58-104(9), and 58-105; Title 58, Chapter 3, Idaho Code, Sections 58-304 through 58-312; Title 58, Chapter 6, Idaho Code; Title 58, Chapter 12; and Title 67, Chapter 52, Idaho Code. ( )

001. SCOPE.

01. Scope. These rules govern the issuance of leases on state-owned navigable waterways. While the State asserts the right to issue leases for all encroachments, navigational or non-navigational, upon, in or above the beds or waters of navigable lakes and rivers, nothing in these rules may be construed to vest in the state of Idaho any property, right or claim of such right to any private lands lying above the natural or ordinary high water mark of any navigable lake or river. ( )

02. Rules Applicable To All Existing And Proposed Uses And Encroachments. These rules apply to all existing and proposed uses and encroachments, whether or not authorized by permit under the Lake Protection Act, Title 58, Chapter 13, Idaho Code, or the Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code. These rules provide that a lease may be required in addition to existing permits. See Section 020 of these rules for information about exceptions to lease requirements. ( )

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho State Board of Land Commissioners or its designee. ( )

02. Commercial Marina. A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to the general public. ( )

03. Commercial Navigational Encroachment. A navigational encroachment used for commercial purposes. ( )

04. Community Dock. A structure that provides private moorage for more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to, homeowners' associations. No public access is required for a community dock. ( )

05. Department. The Idaho Department of Lands or its designee. ( )

06. Director. The director of the Idaho Department of Lands or his designee. ( )

07. Dock Surface Area. Includes docks, slips, piers, and ramps and is calculated in square feet. Dock surface area does not include pilings, submerged anchors, or undecked breakwaters. ( )

08. Encroachments in Aid of Navigation. Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake, river or stream. The term "encroachments in aid of navigation" is used interchangeably with "navigational encroachments." ( )

09. Encroachments Not in Aid of Navigation. Includes all other encroachments on, in, or above the beds or waters of a navigable lake, river or stream, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation. It also includes float homes and floating toys. The term "encroachments not in aid of navigation" is used interchangeably with "non-navigational encroachments." ( )

10. Market Value. The most probable price at a specified date, in cash, or on terms reasonably equivalent to cash, for which the property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. ( )

11. Natural or Ordinary High Water Mark. The line that the water impresses upon the soil by covering it for a sufficient period of time to deprive the soil of its vegetation and destroy its value for agricultural purposes. If, however, the soil, configuration of the surface, or vegetation has been altered by man's activity, the ordinary high water mark is located where it would have been if the alteration had not occurred. ( )

12. Person. An individual, corporation, partnership, limited liability company, association, trust, unincorporated organization or other legal entity qualified to do business in the state of Idaho and any federal, state, tribal, or municipal unit of government. ( )

13. Riparian or Littoral Rights. The rights of owners or lessees of land adjacent to navigable lakes, rivers or streams to maintain their adjacency to the lake, river, or stream and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters. ( )

14. Single-Family Dock. A structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet. ( )

15. State-Owned Navigable Waterways and Navigable Waterways. As used in these rules, the beds of all navigable waterways up to the natural or ordinary high water mark as of the date Idaho was admitted into statehood. This includes any such bed that was formerly submerged and subsequently filled and is now uplands because of human activity (e.g., dikes, berms, jetties) or by natural processes, and includes islands within navigable waterways resulting from human activity or by natural processes. ( )

16. Submerged Lands. The state-owned beds of navigable lakes, rivers, and streams below the natural or ordinary high water marks. ( )

17. Temporary Permit. A revocable instrument authorizing a specific use on navigable waterways usually issued for five (5) years or less, but that may be issued for up to ten (10) years. ( )

18. Two-Family Dock. A structure providing noncommercial moorage that serves two (2) adjacent waterfront owners having a combined waterfront footage of no less than fifty (50) feet. Usually the structure is located on the common littoral property line. ( )

19. Uplands. The land bordering on navigable waterways. ( )

011. -- 019. (RESERVED)

020. APPLICABILITY.
Leases are required for all encroachments defined in subsections 010.08 and 010.09 that are above, across, over, in, through, upon, and under the beds of navigable waterways except: ( )

01. Single -Family Docks. Single-family docks constructed: ( )

a. On or before July 1, 1993, that occupy less than eleven hundred (1,100) square feet of dock surface area, and for which all required permits and approvals have been obtained. ( )

b. After July 1, 1993, that occupy less than seven hundred (700) square feet of dock surface area, and for which all required permits and approvals have been obtained. ( )

02. Two-Family Docks. Two-family docks that occupy less than eleven hundred (1,100) square feet of dock surface area, and for which all required permits and approvals have been obtained. ( )

03. Noncommercial Encroachments Free to the Public. Noncommercial encroachments owned by any municipality, county, state, or federal agency for which the complete use is offered free to the public. ( )

04. Temporary Permits or Easements. Uses or encroachments that are customarily authorized by temporary permits or easements, such as roads, railroads, overhead utility lines, submerged cables, and pipelines. Information on easements can be found in IDAPA 20.03.09, "Easements on State-Owned Navigable Waterways." ( )

021. -- 024. (RESERVED)

025. POLICY.

01. Policy of the State of Idaho. It is the policy of the state of Idaho to regulate and control the use and disposition of the beds of navigable waterways so as to provide for their commercial, navigational, recreational or other public use; provided that the Board will take no action in derogation of or seeking to interfere with the riparian or littoral rights of upland landowners. ( )

02. Director May Grant Leases. The Director may grant leases for uses that are in the public interest and consistent with these rules. ( )

03. Requests or Inquiries Regarding Navigability. The State owns the beds of all lakes, rivers, and streams that were navigable in fact at statehood. Information about lakes, rivers, and streams deemed navigable by the State of Idaho is available from the Department. ( )

04. Stream Channel Alteration Permit or Encroachment Permit. Issuance of a lease is contingent upon the applicant obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources, pursuant to Title 42, Chapter 38, Idaho Code, or an encroachment permit if required by the Department pursuant to the Lake Protection Act, Title 58, Chapter 13, Idaho Code. ( )

05. Submerged Lands Lease Required Upon Notification. All persons using submerged lands in a manner that requires a submerged land lease must obtain such a lease from the Director when notified to do so. ( )

06. Term of Lease, Renewal of Lease. Leases are issued for a term of ten (10) years or as determined by the Board. Leases may be renewed for additional periods as determined by the Department based upon satisfactory performance during the present term. Renewals will be processed with a minimum of procedural requirements and will not be denied except in the most unusual circumstances or noncompliance with the terms and conditions of the previous lease. A lease application fee is required for leases that are renewed upon expiration. Lease renewals are initiated by the Department. ( )

07. Rights Granted. The lease grants only such rights as are specified in the lease. The right to use the navigable waterways for all other purposes that do not interfere with the rights authorized in the lease remains with the state. ( )

08. Waiver of Lease Requirements. The Director may, in his discretion, waive lease requirements for single-family or two-family dock encroachments whose dock surface areas exceed square footages described in Subsections 020.01 through 020.02 of these rules when the additional dock surface area square footage is necessary to gain or maintain access to water of sufficient depth to sustain dock use. ( )

09. Private Moorage at Commercial Marinas. ( )

a. This Subsection does not apply to community docks. ( )

b. Private moorage at commercial marinas is allowed as long as the requirements of IDAPA 20.03.04.015.03 are met. ( )

c. The sale, lease, or rental of private moorage is not an encumbrance on navigable waterways. All transactions related to private moorage are subject to the submerged lands lease's terms. ( )

d. Acquisition of private moorage must be documented with a disclosure that the transaction does not convey navigable waterways and only conveys the right to use the designated portion of the marina. ( )

e. The Department does not regulate the cost of private moorage or resolve disputes between a marina and private moorage owners. ( )

026. -- 029. (RESERVED)

030. LEASE APPLICATION, FEE, AND PROCEDURE.

01. Fee. The non-refundable lease application fee is four hundred twenty-five dollars ($425) for new and existing encroachments. ( )

02. Application to Lease and Fee. The lease application and fee must be submitted with the following information, in sufficient detail for the Department to determine an appropriate lease rate: ( )

a. A completed application form. ( )

b. A scale drawing of the proposed lease area with plans detailing all intended improvements, including reference to the nearest known property corner(s). An encroachment or stream channel alteration permit may satisfy this requirement. ( )

03. Notification of Approval or Denial. The Department will notify the applicant in writing if the lease application is approved or denied, and if any additional requirements will be included. ( )

031. -- 034. (RESERVED)

035. RENTAL.
Rental rates for submerged land leases are set by Board policy, which is available on the Department website at http://www.idl.idaho.gov/. ( )

01. Standardized Rental Rates. The Board sets standard submerged land lease rental rates for common uses such as commercial marinas, community docks, float homes, restaurants, and retail stores. Rental rates for commercial marinas and other uses that produce revenue for the lessee will commonly be calculated as a percentage of gross receipts, however, other methods may be used as the Board deems appropriate. ( )

02. Nonstandard Rental Rates. The Board directs the Department to use a percentage of market value or gross receipts, or other methods determined appropriate by the Board, as the submerged lands lease rental rate for non-navigational encroachments or other uncommon uses. ( )

036. YEARLY REPORTING.

01. Annual Report. Lessees must provide an annual report to the Department that includes: ( )

a. A schedule of moorage rental rates, including moorage sizes and types. ( )

b. The number and size of all public boat and float home moorages. ( )

c. The number and size of all private boat and float home moorages. ( )

d. Current proof of insurance as required by the lease. ( )

02. Failure to Report. Failure to provide the annual report information is a violation of these rules. ( )

037. -- 039. (RESERVED)

040. LATE PAYMENT.

01. Late Payment of Rent. Rent not paid by the due date is considered late and will result in the following monthly charges. ( )

a. A late charge of $25.00 or 1% of the unpaid principal obligation, whichever is greater. ( )

b. An interest charge of 1% on the unpaid principal obligation. ( )

02. Late Charge Accrual. The Department will send monthly statements with the outstanding balance that will remain on the account and will continue to accrue late charges and interest each month, or any portion of a month, until the balance is paid in full. All payments will be applied first to accrued interest and late charges, and then to principal. ( )

041. -- 044. (RESERVED)

045. APPRAISAL PROCEDURES.
Appraisals may be used to determine the market value of adjacent uplands for calculating submerged lease rental rates. An appraisal will be conducted by a licensed appraiser selected by the Department, although the applicant may propose an appraiser to the Department. The Department will provide appraisal instructions. The appraisal will be performed in a timely manner, and a copy sent to the Department and the applicant. The expense of the appraisal will be borne by the applicant. ( )

046. -- 049. (RESERVED)

050. LEASE AMENDMENT.

01. Encroachment Amendment. A lease amendment must first be authorized through a lake encroachment or stream alteration permit or permit amendment, if required. ( )

02. Amendment of Existing Lease. Amendment of an existing lease will be processed in the same manner as a new lease application, but no fee will be required. Amendment includes change of use, location, size or scope of the lease site, but does not include ordinary maintenance, repair or replacement of existing structures or facilities. ( )

03. Modification of Interior Facilities. If the proposed changes to a facility do not require a new encroachment permit, a lease amendment may still be needed as described in Subsection 050.02 of these rules. The lessee must give written notice to the Department at least ten (10) days in advance of making such changes. The Department will determine if a lease amendment is needed due to the proposed changes. When requested, the lessee must also furnish one (1) set of as-built plans to the Department within thirty (30) days following completion of changes. ( )

051. -- 054. (RESERVED)

055. ASSIGNMENTS, ASSIGNMENT FEE.

01. Assignment of Lease. Leases may be assigned upon approval of the Director provided that the lease conforms with Subsection 025.02 and all other provisions of these rules. The assignor and assignee must

complete the Department's standard assignment form and forward it to any Department office. ( )

02. Assignment Fee. The assignment fee is two hundred dollars ($200). ( )

03. Permit Assignment. The encroachment permit/stream alteration permit pertinent to a lease must be assigned to a purchaser simultaneously with a lease assignment. A lease assignment will not be approved unless the permit is assigned. ( )

04. Approval Required for Assignment. An assignment is not valid until it has been approved by the Director. ( )

056. -- 059. (RESERVED)

060. CANCELLATION AND ADDITIONAL REMEDIES.

01. Cancellation of Lease for Violation of Terms. Any violation of the lease by the lessee, including non-payment of rent or any violation by lessee of any rule now in force or hereafter adopted by the Board may subject the lease to cancellation. The Department will provide the lessee with written notification specifying the violation, corrective action necessary, and a reasonable time to make the correction. If the corrective action is not taken within the specified time, the Department will notify the lessee of cancellation of the lease no later than thirty (30) days prior to the cancellation's effective date. ( )

02. Lease Reinstatement. A lease may be reinstated within ninety (90) days after cancellation for non-payment by paying the rental, plus interest, and a reinstatement fee to be determined by the Board. ( )

03. Cancellation of Lease for Use Other Than Intended Purpose. A lease not used for the purpose for which it was granted may be canceled. The Department will notify the lessee in writing of any proposed cancellation. The lessee has thirty (30) days to reply in writing to the Department to show cause why the lease should not be canceled. Within sixty (60) days, the Department will notify the lessee of the Department's decision in writing. The lessee has thirty (30) days to appeal an adverse decision to the Director. ( )

04. Removal of Improvements Upon Cancellation. Upon cancellation, the Director will provide the lessee with a specific amount of time, not to exceed six (6) months from the date of final notice, to remove any facilities and improvements. Failure to remove any facilities or structures within such time period established by the Director will be deemed a trespass on navigable waterways. ( )

05. Additional Remedies Available. In addition to termination of the lease for the material default of the lessee, the lease may provide for other remedies to non-monetary breach of the lease including, but not limited to: ( )

a. Civil penalties as determined by the Board and to be collected as additional rent; ( )

b. The reasonable costs of remedial action undertaken by the Department as a result of the lessee's failure to perform a requirement of the lease. These costs will be collected as additional rent; and ( )

c. Such other remedies as the Board deems appropriate. ( )

061. -- 064. (RESERVED)

065. BOND.

01. Bond Requirement Determined by Director. Bonds may be required for commercial navigational, community dock, and nonnavigational leases. The need for bond will be at the discretion of the Director, who will consider the potential for abandonment of the facility, harm to state-owned submerged land and water resources, the personal and real property of adjacent upland owners and the personal and real property owned by the encroachment owner that is appurtenant to and supportive of the encroachment. ( )

02. Performance Bond. In the event a bond is necessary, the lessee must submit a performance bond in favor of the state of Idaho and in a format acceptable to the Director before a lease is issued. Acceptable bonds include surety, collateral, and letters of credit. The amount of bond is the estimated cost of restoration as established by the Director in consultation with the lease applicant on a case by case basis. To determine restoration costs, the Director may consider the potential for damage to land, to improvements, and the cost of structure removal. ( )

066. -- 074. (RESERVED)

075. OTHER RULES AND LAWS.
The lessee must comply with all applicable state, federal, and local rules and laws insofar as they affect the use of the lands described in the lease. ( )

076. -- 999. (RESERVED)

IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES / IDAHO WATER RESOURCE BOARD

37.02.03 – WATER SUPPLY BANK RULES

DOCKET NO. 37-0203-2201 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis (CBA)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. This action is authorized pursuant to Sections 42-1762, 42-1734(19), and 42-1805(8), Idaho Code.

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

This rule governs the Idaho Water Resource Board's operation and management of a Water Supply Bank provided for in Sections 42-1761 to 42-1766, Idaho Code. The purposes of the Water Supply Bank are to encourage the highest beneficial use of water, provide a source of adequate water supplies to benefit new and supplemental water uses, and generate funding for improving water user facilities and efficiencies.

There are no changes to the pending fee rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 5, 2022, Idaho Administrative Bulletin, Vol. 22-10, pages 866–872.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

Idaho Code §§ 42-1761, 42-1762, and 42-1765 authorizes the Idaho Water Resource Board to generate revenue through the operation of water supply bank and rental pools and to collect "lease" and "rental" fees in association with water supply bank and rental pool transactions. This Proposed Rule does not change current water supply bank and rental pool fees.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Mathew Weaver at mathew.weaver@idwr.idaho.gov, (208) 287-4800.

DATED this 14th day of November, 2022.

Gary Spackman, Director
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, ID 83720
Phone: (208) 287-4800

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized pursuant to §§ 42-1762, 42-1734(19), and 42-1805(8), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rule.

The Idaho Department of Water Resources (IDWR) and the Idaho Water Resource Board (IWRB) (the "Agencies") initiated this rulemaking in compliance with Executive Order No. 2020-01, Zero-Based Regulation (ZBR) (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, must be reviewed by the promulgating agency over a five-year period. This review is being conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at https://adminrules.idaho.gov/forms_menu.html. This rule chapter was scheduled for review in 2022.

With this Notice, the Agencies propose a new chapter of water supply bank rules. The new chapter is approximately 7% shorter than the existing water supply bank rule chapter due to both internal agency analysis and external stakeholder negotiation, commentary, and editing. Changes to the rule come through a combination of (a) removal of obsolete provisions (such as outdated "order of consideration" processes), (b) removal of unnecessary provisions (such as definitions for "year" and "person"), and (c) modifications to existing rules regulating the processing of water supply bank leases and rentals.

Pursuant to the ZBR process, this Notice represents the promulgation of a new rule chapter. As a result, the proposed rule does not contain strike-out/underline text in legislative format. The old rule has been repealed and replaced in its entirety. However, the development of the proposed rule text through two publicly-released preliminary rule draft iterations may be viewed at: https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2022-2023/. At the same website, the Agencies also developed and published rulemaking support documents, which provide the Agencies' recommendations on rulemaking, rulemaking analysis, and responses to substantive comments received through the negotiated rulemaking process.

Citizens of the state of Idaho, water users, governmental agencies, and environmental groups may be interested in commenting on the proposed rule text. After consideration of public comments received in response to this Proposed Rule, the Agencies will present the final rule text to the Idaho Legislature in the late fall of 2022.

FEE SUMMARY: The following is a specific description of the fee or charge imposed:

Idaho Code §§ 42-1761, 42-1762, and 42-1765 authorizes the Idaho Water Resource Board to generate revenue through the operation of water supply bank and rental pools and to collect "lease" and "rental" fees in association with water supply bank and rental pool transactions. This Proposed Rule does not change current water supply bank and rental pool fees.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A.

NEGOTIATED RULEMAKING: Pursuant to § 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the March 2, 2022, Idaho Administrative Bulletin, Vol. 22-3, pages 24-25.

INCORPORATION BY REFERENCE: Pursuant to § 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this proposed rulemaking, contact Mathew Weaver at mathew.weaver@idwr.idaho.gov, (208) 287-4800.

Anyone can submit written comments regarding this proposed rule by mail to the address below or by email sent to rulesinfo@idwr.idaho.gov. The Department will consider all written comments received by the undersigned on or before October 26, 2022.

Dated this 2nd day of September 2022

THE FOLLOWING IS THE TEXT OF ZBR FEE DOCKET NO. 37-0203-2201

37.02.03 – WATER SUPPLY BANK RULES

000. LEGAL AUTHORITY.
Section 42-1762, Idaho Code. ( )

001. SCOPE.
These rules govern the Board's operation and management of a Water Supply Bank as provided for in Sections 42-1761 to 42-1766, Idaho Code. These rules are to be used by the Board in considering the purchase, sale, lease or rental of natural flow or stored water, the use of any funds generated therefrom, and the appointment of local committees to facilitate the lease and rental of water from a rental pool. ( )

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho Water Resource Board. ( )

02. Board's Water Supply Bank. The water exchange market operated directly by the Board to facilitate marketing of water rights. ( )

03. Director. The Director of the Idaho Department of Water Resources. ( )

04. Department. The Idaho Department of Water Resources. ( )

05. Lease. To convey by contract a water right to the Board's water supply bank or stored water to a rental pool operated by a local committee. ( )

06. Local Committee. A committee designated by the Board to facilitate marketing of stored water by operating a rental pool pursuant to Section 42-1765, Idaho Code. ( )

07. **Natural Flow**. Water or the right to use water that exists in a spring, stream, river, or aquifer at a certain time and which is not the result of the storage of water flowing at a previous time. ( )

08. **Person**. Any individual, partnership, corporation, association, governmental subdivision, or public or private organization or entity of any character. ( )

09. **Rent**. To convey by contract a water right or stored water from the Board's water supply bank or rental pool. ( )

10. **Rental Pool**. A market operated by a local committee for exchange of stored water. ( )

11. **Stored Water**. Water made available by detention in surface reservoirs or storage space in a surface reservoir. ( )

12. **Water Right**. The legal right to divert and use or to protect in place the public waters of the state of Idaho, including any storage entitlement, where such right is evidenced by a decree, a permit or license issued by the Department. ( )

13. **Water Supply Bank**. The water exchange market operated by the Board pursuant to Sections 42-1761 through 42-1766, Idaho Code, and these rules and is a general term which includes the Board's water supply bank and rental pools. ( )

011. -- 024. (RESERVED)

025. ACQUISITION OF WATER RIGHTS FOR THE BOARD'S WATER SUPPLY BANK.

01. **General**. The Board may purchase, lease, accept as a gift or otherwise obtain rights to natural flow or stored water and credit them to the Board's water supply bank. These water rights may then be divided or combined into more marketable blocks, if there is no injury to other right holders or enlargement of use of the water rights, and the change is in the local public interest. Any person proposing to sell or lease water rights, or to amend an existing lease contract, or to make water available through the water supply bank for the purposes of Section 42-1763B, Idaho Code, shall file a completed application with the Director on forms established by the Department and include additional information required by the Board or Director to evaluate the proposed transaction. The completed application shall state the period a water right is offered for lease, or the period that storage water will be released for fish migration purposes in accordance with Section 42-1763B, Idaho Code, and the payment terms, if any, requested by the applicant. ( )

02. **Application**. Submitted with the completed application shall be: ( )

a. Evidence that the water right has been recorded through a court decree or a permit or license issued by the Department. If the right is included in an ongoing adjudication, a copy of the claim is required; ( )

b. Proof that the applicant currently owns the water right or has the owner's authorization to submit the application. If the right to the use of the water, or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation, or if such works or system is owned or managed by an irrigation district, the written consent of such company, corporation, or irrigation district to the proposed sale or lease must accompany the application; ( )

c. Information that the water right has not been lost through forfeiture as defined in Section 42-222(2), Idaho Code, or through abandonment; ( )

d. Evidence demonstrating the relative availability of water to satisfy the water right; and ( )

e. A lease application filing fee of two hundred fifty dollars ($250) per water right up to a maximum total of five hundred dollars ($500.00) for overlapping water rights which have a common place of use or common diversion rate or diversion volume. ( )

03. Inadequate Application. If an application is not complete, the Director will correspond with the applicant to obtain the needed information. Failure to submit the requested information within thirty (30) days will be cause for the Director to void the application. ( )

04. Criteria. The board will consider the following in determining whether to accept a water right into its water supply bank: ( )

a. Whether the applicant is the current owner, title holder, or contract water user of the water right offered to the Board's water supply bank or has authority to act on behalf of the owner; ( )

b. Whether all necessary consents have been filed with the Board; ( )

c. Whether the information available to the Board indicates that the water right may have been abandoned or forfeited; ( )

d. Whether the offering price or requested rental rate is reasonable; ( )

e. Whether acquisition of the water right will be contrary to the State Water Plan; ( )

f. Whether the application is in the local public interest as defined in Section 42-202B, Idaho Code; ( )

g. The likelihood of selling or renting the water right from the Board's water supply bank; and ( )

i. Other factors as determined by the Board. ( )

05. Resolution of Board. The Board may by resolution accept an application to sell or lease water rights to the Board's water supply bank, or otherwise make water available through the water supply bank. An application to lease together with the resolution accepting it becomes a lease. Water rights associated with a lease are placed into the Board's water supply bank upon adoption of the resolution. A resolution accepting an application to sell water rights to the Board's water supply bank will provide authority for the chairman of the Board to enter an agreement to purchase the water rights. The resolution may include conditions of approval, including but not limited to, the following: ( )

a. A condition providing the length of time the water right will be retained in the Board's water supply bank; ( )

b. A condition describing the terms for payment to the owner of the water right and the sale or rental price from the Board's water supply bank; and ( )

c. Other conditions as the Board determines appropriate, including a condition recognizing that water is available through the water supply bank pursuant to the provisions of Section 42-1763B, Idaho Code, for purposes of fish migration. ( )

06. Placement of Water Right. Effect of placement of a water right into the Board's water supply bank. ( )

a. Upon acceptance of a water right into the Board's water supply bank, the owner of the water right is not authorized to continue the diversion and use of the right while it is in the Board's water supply bank. ( )

b. A water right which has been accepted shall remain in the Board's water supply bank for the period designated by the Board unless removed by resolution of the Board. ( )

c. The owner of the water right shall remain responsible to take actions required to claim the water right in an adjudication or other legal action concerning the water right and to pay taxes, fees, or assessments related to the water right. ( )

d. The forfeiture provisions of Section 42-222(2), Idaho Code are tolled during the time the water right is in the Board's water supply bank, pursuant to the provisions of Section 42-1764, Idaho Code. ( )

026. -- 029. (RESERVED)

030. SALE OR RENTAL OF WATER RIGHTS FROM THE BOARD'S WATER SUPPLY BANK.

01. General. The Board may in its discretion initiate the process to sell or rent water rights from the Board's water supply bank. An application to rent, or to amend an existing rental, shall be on forms established by the Director and shall include such additional information as required by the Board or Director to evaluate the proposed rental. The sale or rental price shall be the price, if any, as determined by the Board. ( )

02. Application. Submitted with the completed application shall be: ( )

a. Evidence of authority or permission to use water at the proposed place of use, to divert water at the proposed point of diversion, and to deliver water through the proposed conveyance system, including a canal, lateral, or ditch, for delivery of water; ( )

b. The proposed beneficial use of water and the quantity of water to be diverted during the rental, including the number of acres to be irrigated if the application is for irrigation; ( )

c. A map of sufficient scale to show the proposed points of diversion and proposed places of use, including the number of acres to be irrigated if the application is for irrigation; and ( )

d. If the rental application proposes to change the nature of use of a specific water right, evidence sufficient to establish historical consumptive use, as defined in Section 42-202B, Idaho Code, of the right proposed to be rented. ( )

03. Inadequate Application. If an application is not complete, the Director will correspond with the applicant to obtain the needed information. Failure to submit the requested information within thirty (30) days will be cause for the Director to void the application. ( )

04. Notice. The Director may give notice of an intended rental as he deems necessary, provided that prior to approving any application for purchase, or for rental for a period of more than five (5) years, he shall give notice as required in Section 42-222(1), Idaho Code. ( )

05. Consideration. All applications received on or prior to November 1 of the calendar year prior to the proposed rental start date will be considered as having been received at the same time. Applications received after November 1 may be considered only if sufficient water remains in the Board's water supply bank. ( )

06. Application Evaluation Criteria. ( )

a. The Director will evaluate applications using the following: ( )

i. Whether the proposal would constitute an enlargement of the water right; ( )

ii. Whether the water will be put to a beneficial use; ( )

iii. Whether the water supply available from applicable rights in the Board's water supply bank is sufficient for the use intended; ( )

iv. Whether the proposal is in the local public interest; and ( )

v. Other factors as determined by the Director or the Board. ( )

b. The Department may request additional information from a lessor or rental applicant as needed to evaluate the proposed rental relative to the criteria stated in this section. If the information requested from a lessor is

not received within thirty (30) days, the Department may consider a different lease to satisfy the proposed rental. If the information requested from a rental applicant is not received within thirty (30) days, the Director may void the rental application. ( )

c. For applications submitted pursuant to Section 42-1763B, Idaho Code, the Director will only make an evaluation as to whether the proposed use of water will cause injury to other water rights. ( )

d. The Director may defer the evaluation of potential injury to other water rights conditioned upon the right of any affected water right holder to petition the Director pursuant to Section 42-1766, Idaho Code, to revoke or modify the rental approval upon a showing of injury. ( )

e. The Director shall consider in determining whether to approve a rental of water for use outside of the state of Idaho those factors enumerated in Section 42-401(3), Idaho Code, except that this evaluation is not required for applications submitted pursuant to Section 42-1763B, Idaho Code. ( )

07. Authorized to Rent. The Director is authorized to rent water rights offered by the Board from the Board's water supply bank for a period up to five (5) years, but shall submit applications for purchase, or rental for a period of more than five (5) years to the Board for action. The Director will advise the Board on applications which require Board approval under Rule Subsection 025.06. The Director will advise whether he can approve the application in whole or in part or with conditions to comply with Section 42-1763, Idaho Code. ( )

08. Board Review. The Board will review applications for purchase, or which propose the rental of water rights for a duration of more than five (5) years, and may approve, approve with conditions, or reject the applications as the Board determines to best meet the purposes of Section 42-1761, Idaho Code and promote the interest of the people of the state of Idaho. ( )

031. -- 034. (RESERVED)

035. HANDLING OF MONEY ASSOCIATED WITH THE BOARD'S WATER SUPPLY BANK.
Fees collected pursuant to Rules 025 and 030 from the acquisition, sale, or rental of water rights for or from the Board's water supply bank do not apply to rental pools described in Rule 040 and will be handled as follows: ( )

01. Credited Amount. Ten percent (10%) of the gross amount received from the sale or rental of a water right from the Board's water supply bank and the entire lease application fee received pursuant to Rule 025 shall be credited to the Water Administration Account created by Section 42-238a, Idaho Code, or to the federal grant fund if the payment is received from a federal agency, for administrative costs of operating the Water Supply Bank. ( )

02. Excess Funds. Any funds in excess of the amount needed to compensate the owner of the water right in accordance with the resolution accepting the water right into the Board's water supply bank and the administrative charge of Rule Subsection 035.01.a shall be credited to the Water Management Account created by Section 42-1760, Idaho Code, for use by the Board. ( )

036. -- 039. (RESERVED)

040. APPOINTMENT OF LOCAL RENTAL POOL COMMITTEES.

01. Board Meetings for Committee Appointments. The Board may at any regular or special meeting consider appointing an entity to serve as a local committee to facilitate the lease and rental of stored water. At least ten (10) days prior to the meeting, the entity seeking appointment shall provide to the Director information concerning the organization of the entity, a listing of its officers, a copy of its bylaws and procedures, if applicable, a copy of the proposed local committee procedures, pursuant to which the local committee would facilitate the lease and rental of stored water, together with a copy of each general lease and rental form proposed to be used by the local committee. The local committee procedures must be approved by the Board and provide for the following: ( )

a. Determination of priority among competing applicants to lease stored water to the rental pool and to rent stored water from the rental pool; ( )

b. Determination of the reimbursement schedule for those leasing stored water into the rental pool; ( )

c. Determination of the rental price charge to those renting stored water from the rental pool; ( )

d. Determination of the administrative charge to be assessed by the local committee; ( )

e. Allocation of stored water leased to the bank but not rented; ( )

f. Notification of the Department and the watermaster of any rentals where stored water will be moved from the place of use authorized by the permit, license, or decree establishing the stored water right; ( )

g. Submittal of applications to rent water from the rental pool for more than five (5) years to the Board for review and approval as a condition of approval by the local committee; ( )

h. Prevention of injury to other water rights; ( )

i. Protection of the local public interest, except for applications submitted pursuant to Section 42-1763B, Idaho Code; ( )

j. Consistency with the conservation of water resources within the state of Idaho, except for applications submitted pursuant to Section 42-1763B, Idaho Code; and ( )

k. Management of rental pool funds as public funds pursuant to the Public Depository Law, Chapter 1, Title 57, Idaho Code. ( )

02. Local Committee Procedures. The local committee procedures shall provide that a surcharge of ten percent (10%) of the rental fee charged per acre foot of stored water rented from the rental pool shall be assessed and credited to the revolving development account and the water management account established in Sections 42-1752 and 42-1760, Idaho Code, in such proportion as the Board in its discretion shall determine. Such moneys, together with moneys accruing to or earned thereon, shall be set aside, and made available until expended, to be used by the Board for the purposes of Section 42-1761, Idaho Code, unless the surcharge is prohibited by statute, compact or inter-governmental agreement. ( )

03. Review by Director. The Director will review the local committee procedures and submit them along with the Director's recommendation to the Board. The lease and rental form must receive the Director's approval. The Board may designate the applying entity as the local committee for a period not to exceed five (5) years. A Certificate of Appointment will be issued by the Board. The Board may extend the appointment for additional periods up to five (5) years, upon written request of the local committee. The Board may revoke a designation upon request of the local committee, or after a hearing pursuant to the promulgated Rules of Practice and Procedure of the Board, if the Board determines that the local committee is no longer serving a necessary purpose or is not abiding by its own approved procedures, these rules or applicable statutes. ( )

04. Annual Report. The local committee shall report annually on the activity of the rental pool on forms provided by the Board. ( )

05. Submission of Amendments to Procedures to Board. Amendments to the approved procedures of an appointed local committee which change the amount charged for the rental of stored water shall be submitted to the Board by April 1st of any year. The amendment will be considered approved by the Board unless specifically disapproved at the first regular Board meeting following the amendment action of the local committee. The Board may, upon good cause being determined by the Board, specifically approve of amendments submitted after April 1 of any year. ( )

041. -- 999. (RESERVED)

IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES / IDAHO WATER RESOURCE BOARD

37.03.04 – DRILLING FOR GEOTHERMAL RESOURCES RULES

DOCKET NO. 37-0304-2201 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis (CBA)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. This action is authorized pursuant to Sections 42-1734(19), 42-1805(8), and 42-4010, Idaho Code.

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

This rule governs the drilling, operation, maintenance, and abandonment of all geothermal wells in the state. The rule also addresses other related operations and environmental hazards pertaining to the exploration and development of geothermal resources.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 5, 2022, Idaho Administrative Bulletin, Vol. 22-10, pages 873–882.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

IDAPA 37.03.04 governs the regulation of geothermal resource exploration and development and ensures that such activities occur in the public interest. The Rule ensures Idaho's geothermal policy, "to maximize the benefits to the entire state which may be derived from the utilization of our geothermal resources, while minimizing the detriments and costs of all kinds which could results from their utilization" is met. The Rule also requires fees for geothermal exploratory wells, production wells, injection wells, and amendments to permits, as set forth in Idaho Code §§ 42-4003 and 42-4011.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Mathew Weaver at mathew.weaver@idwr.idaho.gov, (208) 287-4800.

DATED this 14th day of November, 2022.

Gary Spackman, Director
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, ID 83720
Phone: (208) 287-4800

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized pursuant to §§ 42-1734(19), 42-1805(8), and 42-4010, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rule.

The Idaho Department of Water Resources (IDWR) and the Idaho Water Resource Board (IWRB) (the "Agencies") initiated this rulemaking in compliance with Executive Order No. 2020-01, Zero-Based Regulation (ZBR) (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, must be reviewed by the promulgating agency over a five-year period. This review is being conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at https://adminrules.idaho.gov/forms_menu.html. This rule chapter was scheduled for review in 2022.

With this Notice, the Agencies propose a new chapter of drilling for geothermal resources rules. The new chapter is approximately 23% shorter than the existing drilling for geothermal resources rule chapter due to both internal agency analysis and external stakeholder negotiation, commentary, and editing. Changes to the rule come through a combination of (a) removal of obsolete provisions (such as the classification and treatment of "confidential" agency well construction records), (b) removal of unnecessary provisions (such as the definition and use of the term "production well"), and (c) modifications to existing rules regulating the processing of permits for the drilling of wells to use geothermal resources.

Pursuant to the ZBR process, this Notice represents the promulgation of a new rule chapter. As a result, the proposed rule does not contain strike-out/underline text in legislative format. The old rule has been repealed and replaced in its entirety. However, the development of the proposed rule text through two publicly-released preliminary rule draft iterations may be viewed at: https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2022-2023/. At the same website, the Agencies also developed and published rulemaking support documents, which provide the Agencies' recommendations on rulemaking, rulemaking analysis, and responses to substantive comments received through the negotiated rulemaking process.

Citizens of the state of Idaho, water users, governmental agencies, and environmental groups may be interested in commenting on the proposed rule text. After consideration of public comments received in response to this Proposed Rule, the Agencies will present the final rule text to the Idaho Legislature in the late fall of 2022.

FEE SUMMARY: The following is a specific description of the fee or charge imposed:

IDAPA 37.03.04 governs the regulation of geothermal resource exploration and development and ensures that such activities occur in the public interest. The Rule promotes Idaho's geothermal policy, "to maximize the benefits to the entire state which may be derived from the utilization of our geothermal resources, while minimizing the detriments and costs of all kinds which could result from their utilization". The Rule also requires fees for geothermal exploratory wells, production wells, injection wells, and amendments to permits, as set forth in Idaho Code §§ 42-4003 and 42-4011.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A.

NEGOTIATED RULEMAKING: Pursuant to § 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the March 2, 2022, Idaho Administrative Bulletin, Vol. 22-3, pages 26-27.

INCORPORATION BY REFERENCE: Pursuant to § 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this proposed rulemaking, contact Mathew Weaver at mathew.weaver@idwr.idaho.gov, (208) 287-4800.

Anyone can submit written comments regarding this proposed rule by mail to the address below or by email sent to rulesinfo@idwr.idaho.gov. The Department will consider all written comments received by the undersigned on or before October 26, 2022.

Dated this 2nd day of September 2022

THE FOLLOWING IS THE TEXT OF ZBR FEE DOCKET NO. 37-0304-2201

37.03.04 – DRILLING FOR GEOTHERMAL RESOURCES RULES

000. LEGAL AUTHORITY (RULE 0).
Section 42-4001 through Section 42-4015, Idaho Code. ( )

001. TITLE AND SCOPE (RULE 1).
These rules establish the framework for the drilling, operation, maintenance, and abandonment of all geothermal wells in the state. ( )

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).
For these rules, the following definitions apply. ( )

01. **Applicant**. Any person applying to the Department of Water Resources for a permit for the construction and operation of any well or injection well. ( )

02. **Board**. The Idaho Water Resource Board. ( )

03. **BOPE**. An abbreviation for Blow Out Prevention Equipment which is designed to be attached to the casing in a geothermal well to prevent a blow out of the drilling mud. ( )

04. **Completion**. A well is completed thirty (30) days after drilling operations have ceased unless a suspension of operation is approved by the Director, or thirty (30) days after it has commenced producing a geothermal resource, whichever occurs first, unless drilling operations are resumed before the end of the thirty (30) day period or at the end of the suspension. ( )

05. Conductor Pipe. The first and largest diameter string of casing to be installed in the well. This casing extends from land surface to a depth great enough to keep surface waters from entering and loose earth from falling in the hole and to provide anchorage for blow out prevention equipment prior to setting surface casing. ( )

06. Department. The Idaho Department of Water Resources. ( )

07. Director. The Director of the Idaho Department of Water Resources. ( )

08. Drilling Logs. The recorded description of the lithologic sequence encountered in drilling a well. ( )

09. Drilling Operations. The actual drilling, redrilling, or recompletion of the well for production or injection including the running and cementing of casing and the installation of well head equipment. Drilling operations do not include perforating, logging, and related operations after the casing has been cemented. ( )

10. Exploratory Well. A well drilled for the discovery or evaluation of geothermal resources. ( )

11. Geothermal Area. The same general land area which in its subsurface is underlain or reasonably appears to be underlain by geothermal resources from or in a single reservoir, pool, or other source or interrelated sources, as such area or areas may be designated from time to time by the Director. ( )

12. Geothermal Field. An area which contains a well or wells capable of commercial production of geothermal resources. ( )

13. Geothermal Resource. The natural heat energy of the earth, the energy in whatever form which may be found in any position and at any depth below the surface of the earth, present in, resulting from, or created by, or which may be extracted from such natural heat and all minerals in solution or other products obtained from the material medium of any geothermal resource. Groundwater having a temperature of two hundred twelve (212) degrees Fahrenheit or more in the bottom of a well shall be classified as a geothermal resource. Geothermal resources are found and hereby declared sui generis, being neither a mineral resource nor a water resource but they are also found and hereby declared closely related to and possibly affecting and affected by water and mineral resources in many instances. ( )

14. Injection Well. Any special well, converted producing well, or reactivated or converted abandoned well employed for injecting material into a geothermal area or adjacent area to maintain pressures in a geothermal reservoir, pool, or other source, or to provide new material or to serve as a material medium therein, or for reinjecting any material medium or the residue thereof, or any by-product of geothermal resource exploration or development into the earth. ( )

15. Intermediate Casing. The casing installed within the well to seal out brackish water, caving zones, etc., below the bottom of the surface casing. Such casings may either be lapped into the surface casing or extend to land surface. ( )

16. Material Medium. Any substance including, but not limited to, naturally heated fluids, brines, associated gasses and steam in whatever form, found at any depth and in any position below the surface of the earth, which contains or transmits the natural heat energy of the earth, but excluding petroleum, oil, hydrocarbon gas, or other hydrocarbon substances. ( )

17. Notice of Intent (NOI). A written statement to the Director that the applicant intends to do work. ( )

18. Observation Well. A small diameter well drilled strictly for monitoring purposes. In no case shall an observation well be completed for production of geothermal resources or for use as an injection well. ( )

19. Operator. Any person drilling, maintaining, operating, pumping, or in control of any well. The term operator also includes owner when any well is or has been or is about to be operated by or under the direction of

the owner. ( )

20. Owner. The owner of the geothermal lease or well and includes operator when any well is operated or has been operated or is about to be operated by any person other than the owner. ( )

21. Permit. A permit issued pursuant to these rules for the construction and operation of any well or injection well. ( )

22. Person. Any individual natural person, general or limited partnership, joint venture, association, cooperative organization, corporation, whether domestic or foreign, agency or subdivision of this or any other state or municipal or quasi-municipal entity whether or not it is incorporated. ( )

23. Production Casing. The casing or tubing through which a geothermal resource is produced. This casing extends from the producing zone to land surface. ( )

24. Surface Casing. The first casing run after the conductor pipe to anchor blow out prevention equipment and to seal out all existing groundwater zones. ( )

25. Suspension of Operations. The cessation of drilling, redrilling, or alteration of casing before the well is officially abandoned or completed. All suspensions must be authorized by the Director. ( )

26. Waste. Any physical waste including, but not limited to: ( )

a. Underground waste resulting from inefficient, excessive, or improper use, or dissipation of geothermal energy, or of any geothermal resource pool, reservoir, or other source; or the locating, spacing, constructing, equipping, operating, or producing of any well in a manner which results, or tends to result in reducing the quantity of geothermal energy to be recovered from any geothermal area in the state; ( )

b. The inefficient above-ground transporting and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of geothermal energy; ( )

c. The escape into the open air from a well of steam or hot water more than what is reasonably necessary in the efficient development or production of a well. ( )

27. Well or Geothermal Resource Well. Any excavation or other alteration in the earth's surface or crust by means of which the energy of any geothermal resource or its material medium is sought or obtained. ( )

011. -- 024. (RESERVED)

025. DRILLING (RULE 25).

01. General. All wells shall be drilled to protect or minimize damage to the environment, waters usable for all beneficial purposes, geothermal resources, life, health, or property. ( )

02. Permits and Notices. ( )

a. Permit to Drill for Geothermal Resources. Any person, owner, or operator who proposes to construct or alter a well to produce or explore for geothermal resources or to construct or alter an injection well shall first apply to the Director for permit. If the owner or operator plans to deepen, redrill, plug, or perform any operation that will in any manner alter the well, an application shall be filed with the Director and written approval must be received prior to beginning work. Application for permit shall be on a form approved by the Department. ( )

b. Application for Permit to Convert to Injection. If the owner plans to convert an existing geothermal well into an injection well with no change of mechanical condition, an application for permit shall be filed with the Director and written approval must be received prior to beginning injection. Application for permit shall be made on a form approved by the Department. ( )

c. Amendment of Permit. No well may be owned or operated by any person whose name does not appear on the permit or permit application and no changes in departure from the procedures, location, data, or persons specified on the face of a permit shall be allowed until an amendment to such permit is approved by the Director. Application for amendment shall be made on a form approved by the Department. ( )

d. Notice to Other Agencies. Notice of applications, permits, orders, or other actions received or issued by the Director may be given to any other agency or entity which may have information, comments, or jurisdiction over the activity involved. The Director may execute a memorandum of understanding with other agencies to eliminate duplication of applications or other efforts. ( )

e. No application shall be accepted by the Director until the filing fee required by § 42-4003(5), Idaho Code has been deposited with the Director. ( )

03. Bonds. ( )

a. The Director shall require every operator or owner who engages in the construction, alteration, testing, operation, or abandonment of the well to provide to the Director evidence of good and sufficient security in the form and amounts required by Idaho Code § 42-4005(f). ( )

b. Bonds remain in force for the life of the well or wells and may not be released until the well or wells are properly abandoned, or another valid bond is substituted therefor. Any person who acquires the ownership or operation of any well or wells shall within thirty (30) days after acquisition provide to the Director evidence of good and sufficient security in the form and amounts required by Idaho Code § 42-4005(f). ( )

04. Well Spacing. ( )

a. Any well drilled for the discovery and production of geothermal resources or as an injection well shall be located more than one hundred (l00) feet from and within the outer boundary of the parcel of land on which the well is situated, or more than one hundred (l00) feet from a public road, street, or highway dedicated prior to the commencement of drilling. This requirement may be modified or waived by the Director upon written request. ( )

b. For several contiguous parcels of land in one or different ownerships that are operated as a single geothermal field, the term outer boundary line means the outer boundary line of the land included in the field. In determining the contiguity of any such parcels of land, no street, road, or alley lying within the lease or field shall be determined to interrupt such contiguity. ( )

c. The Director shall approve the proposed well spacing programs or prescribe such modifications to the programs as he deems necessary for proper development giving consideration to such factors as, but not limited to, topographic characteristics of the area, hydrologic, geologic, and reservoir characteristics of the area, the number of wells that can be economically drilled to provide the necessary volume of geothermal resources for the intended use, minimizing well interference, unreasonable interference with multiple use of lands, and protection of the environment. ( )

d. Directional Drilling. Where the surface of the parcel of land containing one acre or more is unavailable for drilling, the surface well location may be located upon property which may or may not be contiguous. Such surface well locations shall not be less than twenty-five (25) feet from the outer boundary of the parcel on which it is located, nor less than twenty-five (25) feet from an existing street or road. The production or injection interval of the well shall not be less than one hundred (100) feet from the outer boundary of the parcel into which it is drilled. Directional surveys must be filed with the Director for all wells directionally drilled. ( )

05. Casing. ( )

a. General. All wells shall be cased in such a manner as to protect or minimize damage to the environment, usable ground waters, geothermal resources, life, health, and property. The permanent well head completion equipment shall be attached to the production casing or to the intermediate casing if production casing

does not reach the surface. No permanent well head equipment may be attached to any conductor or surface casing alone. The specification for casing strength shall be determined by the Director on a well-to-well basis. All casing reaching the surface shall provide adequate anchorage for blow out prevention equipment, hole pressure control, and protection for natural resources. Sufficient casing shall be run to reach a depth below all known or reasonably estimated groundwater levels to prevent blow outs or uncontrolled flows. The following casing requirements are general but should be used as guidelines in submitting applications for permit to drill. The casing schedule may consist of multiple casing strings (i.e., surface casing, intermediate casing, production casing) provided drilling depth does not exceed ten times the depth of last cemented casing. ( )

b. Conductor Pipe. A minimum of forty (40) feet of conductor pipe shall be installed. The annular space is to be cemented solid to the surface. A twenty-four (24) hour cure period for the grout must be allowed prior to drilling out the shoe unless additives sufficient, as determined by the Director, are used to obtain early strength. An annular blow out preventer shall be installed on all exploratory wells and on development wells when deemed necessary by the Department. ( )

c. Surface Casing. The surface casing hole shall be logged with an induction electrical log or equivalent or gamma-neutron log before running casing. This requirement may be waived by the Director. Permission to waive this requirement must be granted by the Director in writing prior to running surface casing. This casing shall provide for control of formation fluids, protection of usable groundwater, and for adequate anchorage for blow out prevention equipment. All surface casing shall be cemented solid to the surface. A twenty-four (24) hour cure period shall be allowed prior to drilling out the shoe of the surface casing unless additives sufficient, as determined by the Director, are used to obtain early strength. ( )

i. In areas of known high formation pressure, surface casing shall be set at the depth determined by the Director after a study of geologic conditions in the area. ( )

ii. In areas where subsurface geological conditions are variable or unknown, surface casing shall be in accordance with specifications as outlined in a. above. The casing must be seated through a sufficient series of low permeability, competent lithologic units such as claystone, siltstone, basalt, etc., to ensure a solid anchor for blow out prevention equipment and to protect usable groundwater from contamination. Additional casing may be required if the first string has not been cemented through a sufficient series of such beds, or a rapidly increasing thermal gradient or formation pressures are encountered. ( )

iii. The temperature of the return drilling mud shall be monitored continuously during the drilling of the surface casing hole. Either a continuous temperature-monitoring device shall be installed and maintained in a working condition or the temperature shall be read manually. In either case, the return temperature shall be entered into the logbook on thirty (30) foot increments. ( )

iv. BOPE capable of shutting in the well during any operation shall be installed on the surface casing and maintained ready for use at all times. BOPE pressure tests shall be performed by the operator for Department personnel on all exploratory wells prior to drilling out the shoe of the surface casing. The decision to perform BOPE pressure tests on other types of wells shall be made on a well-to-well basis by the Director. The Director must be notified five (5) days in advance of a scheduled pressure test. Permission to proceed with the test sooner may be given verbally by the Director upon request by the operator. ( )

d. Intermediate Casing. Intermediate casing shall be required for protection against anomalous pressure zones, cave-ins, washouts, abnormal temperature zones, uncontrollable lost circulation zones or other drilling hazards. Intermediate casing strings when installed shall be cemented solidly to the surface or to the top of the casing. ( )

e. Production Casing. Production casing may be set above or through the producing or injection zone and cemented either below or just above the objective zones. Sufficient cement shall be used to exclude overlying formation fluids from the geothermal zone, to segregate zones, and to prevent movement of fluids behind the casing into possible fresh groundwater zones. Production casing shall either be cemented solid to the surface or lapped into the intermediate casing if run. If the production casing is lapped into an intermediate casing, the casing overlap shall be at least fifty (50) feet, the lap shall be cemented solid, and the lap shall be pressure tested to ensure its integrity. ( )

06. Electric Logging. All wells except observation wells shall be logged with an induction electrical log or equivalent or gamma-neutron log from the bottom of the hole to the bottom of the conductor pipe. This requirement may be modified or waived by the Director upon written request. ( )

026. ALTERNATIVE METHODS (RULE 26).
To accommodate the use of advanced or new technology, and in consideration of methods not specifically addressed in these rules, the Director may consider specific proposals for alternative methods of drilling and constructing geothermal resource wells. ( )

027. -- 029. (RESERVED)

030. RECORDS (RULE 30).

01. General. The owner of any well shall keep or cause to be kept a careful and accurate log, core record, temperature logs, and history of the drilling of the well. These records shall be kept in the nearest office of the owner or at the well site and together with all other reports of the owner and operator regarding the well shall be subject to inspection by the Director during business hours. All records unless otherwise specified must be filed with the Director within thirty (30) days of completion of the well. ( )

02. Records to Be Filed with the Director. ( )

a. Drilling Logs and Core Record. Include the lithologic characteristics and depths of formations encountered, the depth and temperatures of water-bearing and steam-bearing strata, the temperatures, chemical compositions and other chemical and physical characteristics of fluids encountered as ascertained. The core record shall show the depth, lithologic character, and fluid content of the obtained cores. ( )

b. Well History. The well history shall describe in detail all significant daily operations carried out and equipment used during all phases of drilling, testing, completion, and abandonment of any well. ( )

c. Well Summary Report. The well summary report shall accompany the core record and well history reports. It is designed to show data pertinent to the condition of a well at the time of completion of work done. ( )

d. Production Records. The owner of any well producing geothermal resources shall file with the Director on or before the 20th day of each month for the preceding month a statement of production utilized in such a form as the Director may designate. Copies of monthly geothermal energy report forms are available from the Director; however, production data can be submitted on non-department forms if previously approved by the Director. ( )

e. Injection Records. The owner of any well injecting geothermal fluids or wastewater for any purpose shall file with the Director on or before the twentieth day of each month for the preceding month a report of the injection in such form as the Director may designate. Copies of monthly injection report forms are available from the Director. Injection data may be submitted on non-department forms if previously approved by the Director. ( )

f. Electric Logs and Directional Surveys. When conducted, electric logs and directional surveys shall be filed with the Director within sixty (60) days of completion, cessation of drilling operations, excluding any approved suspension of operations, or abandonment of any well. Like copies shall be filed upon recompletion of any well. Upon a showing of hardship, the Director may extend the time within which to comply for a period not to exceed six (6) additional months. ( )

031. -- 034. (RESERVED)

035. BLOW OUT PREVENTION (RULE 35).

01. BOPE. Must be capable of controlling the well under known and unknown reservoir conditions.

( )

a. If reservoir conditions are unknown, data loggers shall be installed to continuously monitor and record the following conditions until the well has been drilled to total depth. ( )

i. Drilling mud temperature (in and out). ( )

ii. Drilling mud pit level. ( )

iii. Drilling mud pump volume. ( )

iv. Drilling mud weight. ( )

v. Drilling rate. ( )

vi. Hydrocarbon and hydrogen sulfide gas volume (with alarm). ( )

b. Annular BOPE with a minimum working pressure of one thousand (1,000) PSI shall be installed on the surface casing. If unusual conditions are anticipated, a BOPE may be required on the conductor pipe. ( )

c. If drilling mud temperature out reaches one hundred twenty-five (125) Degrees C (Celsius), drilling operations shall cease, drilling mud circulation will continue and the Director must be notified immediately. The operator must obtain the Director's approval of his proposed course of action prior to resuming drilling operations. ( )

d. When reservoir conditions are known, a gate valve with a minimum working pressure rating of three hundred (300) PSI may be installed on the well head. ( )

e. When reservoir conditions are known, the temperature of the return mud shall be monitored continuously. Either a continuous temperature monitoring device shall be installed and maintained in working condition or the temperature shall be read manually. In either case, return mud temperatures shall be entered into the logbook for each thirty (30) feet of depth drilled. ( )

f. The Director may approve BOPE modifications upon written request by the applicant. BOPE requirements under these rules may be modified by the Director depending upon the knowledge of the area. Such requirements may be set forth on the approved application for permit to drill a geothermal well or made in the field by Department personnel monitoring construction of the well. ( )

036. -- 039. (RESERVED)

040. INJECTION WELLS (RULE 40).

01. Construction. The owner of a proposed injection well or series of injection wells shall provide the Director with such information he deems necessary for evaluation of the impact of such injection on the geothermal reservoir and other natural resources. Such information shall include existing reservoir conditions, method of injection, source of injection fluid, estimates of daily amount of material medium to be injected, zones or formations affected, and analysis of fluid to be injected and of the fluid from the intended zone of the injection. Such information shall be on a form approved or provided by the Director. ( )

02. Surveillance. ( )

a. When an owner proposes to drill or modify an injection well or convert a producing or idle well to an injection well, he shall be required to demonstrate to the Director by means of a test that the casing has complete integrity. This test shall be conducted in a method approved by the Director. ( )

b. To establish the integrity of the annular cement above the shoe of the casing, the owner shall make sufficient surveys within thirty (30) days after injection is started into a well to prove that all the injected fluid is

confined to the intended zone of injection. Thereafter, such surveys shall be made at least every two (2) years or more often if necessary. The Director shall be notified forty-eight (48) hours in advance of such surveys in order that a representative may be present if deemed necessary. If in the Director's opinion such tests are not necessary, he may grant a waiver excepting the operator from such tests. ( )

c. Department personnel may inspect the well site periodically after the well has been placed on injection. The Director may notify the operator or owner if any remediation work is necessary. Any remediation work must be performed within ninety (90) days of notification by the Director. The Director may rescind approval of the injection well for failure to perform necessary work. ( )

041. -- 044. (RESERVED)

045. ABANDONMENT (RULE 45).

01. Objectives. The objectives of abandonment are to block interzonal migration of fluids to: ( )

a. Prevent contamination of fresh water or other natural resources; ( )

b. Prevent damage to geothermal reservoirs; ( )

c. Prevent loss of reservoir energy; and ( )

d. Protect life, health, environment, and property. ( )

02. General Requirements. The following are general requirements which are subject to review and modification for individual wells or field conditions. ( )

a. A NOI to abandon geothermal resource wells is required to be filed with the Director five (5) days prior to beginning abandonment procedures. A permit to abandon may be given verbally by the Director provided the operator submits a written abandonment request on a form approved by the Director within twenty-four (24) hours of the verbal request. ( )

b. All wells abandoned shall be monumented with four (4) inch diameter pipe ten (10) feet in length of which four (4) feet shall be above ground. The remainder shall be embedded in concrete. The name, number, and location of the well shall be shown on the monument. Alternate methods of monumentation may be approved by the Director where land surface use indicates the above-described method is not satisfactory. ( )

c. Heavy drilling fluid or other seal material approved by the Director shall be used to replace any water in the hole and to fill all portions of the hole not plugged with cement. ( )

d. All cement plugs with a possible exception of the surface plug shall be pumped into the hole from the bottom up through drill pipe or tubing. ( )

e. All open annuli shall be filled with cement to the surface. ( )

f. A minimum of one hundred (100) feet of cement shall be emplaced straddling the interface or transition zone at the base of groundwater aquifers. ( )

g. One hundred (100) feet of cement shall straddle the shoe plug on all casings including conductor pipe. ( )

h. A surface plug of either neat cement or cement shall be emplaced from the top of the casing to at least fifty (50) feet below the top of the casing. ( )

i. All casing shall be cut off at least five (5) feet below land surface. ( )

j. Cement plugs shall extend at least fifty (50) feet over the top of any liner installed in the well.

( )

k. Other abandonment procedures may be approved by the Director if the owner can demonstrate that the geothermal resource, groundwaters, and other natural resources will be protected. Such approval must be given in writing by the Director prior to the beginning of any abandonment procedures. ( )

l. An abandonment report must be submitted to the Department within five (5) days after the completion of the abandonment. ( )

046. -- 049. (RESERVED)

050. MAINTENANCE (RULE 50).

01. General. All well heads, separators, pumps, mufflers, manifolds, valves, pipelines, and other equipment used to produce geothermal resources shall be maintained in good condition in order to prevent loss of or damage to life, health, property, and natural resources. ( )

02. Corrosion. All surface well head equipment and pipelines and subsurface casing and tubing will be subject to periodic corrosion surveillance to safeguard health, life, property, and natural resources. ( )

03. Tests. The Director may require such tests or remediation necessary to prevent damage to life, health, property, and to protect geothermal and groundwater resources. Such tests may include, but are not limited to, casing tests, cementing tests, and equipment tests. ( )

051. -- 059. (RESERVED)

060. HEARINGS ON DENIED, LIMITED, OR CONDITIONED PERMIT OR OTHER DECISIONS OF THE DIRECTOR (RULE 60).
Pursuant to Idaho Code §§ 42-4004(c) and 42-4005(d), any applicant who is granted a limited or conditioned permit, or who is denied a permit or any person aggrieved by a decision of the Director may seek a hearing on said action of the Director by serving on the Director written notice and request for a hearing before the Board within thirty (30) days of service of the Director's decision. Said hearing will be set, conducted, and notice given as set forth in the Rules promulgated by the Board under the provisions of Title 67, Chapter 52, Idaho Code. Any applicant may appeal the decision of the Board to the District Court within thirty (30) days of service of the decision. ( )

061. -- 064. (RESERVED)

065. ENFORCEMENT (RULE 65).

01. Enforcement by Director. When the Director determines that any person is in substantial violation of any provisions of the Geothermal Resources Act (Chapter 40, Title 42, Idaho Code) or of any rule, permit, certificate, condition of approval or order issued or promulgated pursuant to the Geothermal Resources Act, the Director may commence an administrative enforcement action by issuing a written notice of violation in accordance with the provisions of Idaho Code §42-1701B. The Director may enforce any provision of the Geothermal Resources Act or any order or regulation issued or adopted pursuant thereto by an appropriate action in the district court. The Director may bring action in the District Court to enjoin noncompliance with any provision of this act. ( )

066. --999. (RESERVED)

IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES / IDAHO WATER RESOURCE BOARD

37.03.05 – MINE TAILINGS IMPOUNDMENT STRUCTURES RULES

DOCKET NO. 37-0305-2201 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis (CBA)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. This action is authorized pursuant to Sections 42-1710 and 42-1714, Idaho Code.

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

This rule governs the design review, bonding, and inspection of the construction and operation of mine tailings impoundment structures.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 5, 2022, Idaho Administrative Bulletin, Vol. 22-10, pages 883–893.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

IDAPA 37.03.05 establishes acceptable construction standards and governs IDWR's design and technical review of mine tailing and water impoundment structures. This rule also supports the collection of a fee to review plans, drawings, and specifications pertaining to any mine tailings impoundment structure, as set forth in Idaho Code §§ 42-1712 and 42-1713.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Mathew Weaver at mathew.weaver@idwr.idaho.gov, (208) 287-4800.

DATED this 14th day of November, 2022.

Gary Spackman, Director
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, ID 83720
Phone: (208) 287-4800

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized pursuant to §§ 42-1710 and 42-1714, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rule.

The Idaho Department of Water Resources (IDWR) and the Idaho Water Resource Board (IWRB) (the "Agencies") initiated this rulemaking in compliance with Executive Order No. 2020-01, Zero-Based Regulation (ZBR) (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, must be reviewed by the promulgating agency over a five-year period. This review is being conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at https://adminrules.idaho.gov/forms_menu.html. This rule chapter was scheduled for review in 2022.

With this Notice, the Agencies propose a new chapter of mine tailings impoundment structures rules. The new chapter is approximately the same length as the existing mine tailings impoundment structures rules. Only one change from the existing rule is proposed in this rule. The change addresses fixing an inconsistency between current statutory requirements and outdated requirements in the old rule concerning the inspection intervals of mine tailings impoundment structures. Rules 10.13 and 40.01 were updated to reconcile the inconsistency.

Pursuant to the ZBR process, this Notice represents the promulgation of a new rule chapter. As a result, the proposed rule does not contain strike-out/underline text in legislative format. The old rule has been repealed and replaced in its entirety. However, the development of the proposed rule text through two publicly-released preliminary rule draft iterations may be viewed at: https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2022-2023/. At the same website, the Agencies also developed and published rulemaking support documents, which provide the Agencies' recommendations on rulemaking, rulemaking analysis, and responses to substantive comments received through the negotiated rulemaking process.

Citizens of the state of Idaho, water users, governmental agencies, and environmental groups may be interested in commenting on the proposed rule text. After consideration of public comments received in response to this Proposed Rule, the Agencies will present the final rule text to the Idaho Legislature in the late fall of 2022.

FEE SUMMARY: The following is a specific description of the fee or charge imposed:

IDAPA 37.03.05 establishes acceptable construction standards and governs IDWR's design and technical review of mine tailing and water impoundment structures. The Rule also supports the collection of a fee to review plans, drawings, and specifications pertaining to any mine tailings impoundment structure.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A.

NEGOTIATED RULEMAKING: Pursuant to § 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 4, 2022, Idaho Administrative Bulletin, Vol. 22-5, page 84-85.

INCORPORATION BY REFERENCE: Pursuant to § 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this proposed rulemaking, contact Mathew Weaver at mathew.weaver@idwr.idaho.gov, (208) 287-4800.

Anyone can submit written comments regarding this proposed rule by mail to the address below or by email sent to rulesinfo@idwr.idaho.gov. The Department will consider all written comments received by the undersigned on or before October 26, 2022.

Dated this 2nd day of September 2022

THE FOLLOWING IS THE TEXT OF ZBR FEE DOCKET NO. 37-0305-2201

37.03.05 – MINE TAILINGS IMPOUNDMENT STRUCTURES RULES

000. LEGAL AUTHORITY (RULE 0).
These rules are adopted pursuant to Section 42-1714, Idaho Code. ( )

001. SCOPE (RULE 1).

01. Scope. ( )

a. These rules and standards will only apply to structures upon which construction, lift construction, enlargement, or alteration is underway on or after July l, 1978. Under no circumstances shall these rules be construed to deprive or limit the Director of the Department of Water Resources of any exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount or character of data, or information which may be required by the Director from any owner of a mine tailings impoundment structure for the proper administration of the law. ( )

b. The design requirements listed are intended as a guide to establish acceptable standards of construction. They are not intended to restrict the application of other sound design principles by engineers. The Director will evaluate any deviation from the standards hereinafter stated as they pertain to the safety of any given mine tailings impoundment structure. Engineers are encouraged to submit new ideas which will advance the art and provide for the public safety. ( )

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).
Unless the context otherwise requires, the following definitions govern these rules. ( )

01. Board. The Idaho Water Resource Board. ( )

02. Director. The Director of the Idaho Department of Water Resources. ( )

03. Department. The Idaho Department of Water Resources. ( )

04. Mine Tailings Impoundment Structure. Any artificial embankment which is or will be more than

thirty (30) feet in height measured from the lowest elevation of the toe to the maximum crest elevation constructed for the purpose of storing mine tailings slurry. ( )

05. Mine Tailings Slurry. All slurry wastes from a mineral processing or mining operation. ( )

06. Mine Tailings Storage Capacity. The total storage volume of the impoundment when filled with tailings to the maximum approved design storage elevation. ( )

07. Borrowed Fill Embankment. Any embankment constructed of borrowed earth materials and which is designed for construction by conventional earth moving equipment. ( )

08. Reservoir. Any basin which contains or will contain the material impounded by the mine tailings impoundment structure. ( )

09. Owner. Includes any of the following who own, control, operate, maintain, manage, or propose to construct a mine tailings impoundment structure or reservoir. ( )

a. The state of Idaho and any of its departments, agencies, institutions and political subdivisions; ( )

b. The United States of America and any of its departments, bureaus, agencies and institutions; provided that the United States of America shall not be required to pay any of the fees required by Section 42-1713, Idaho Code, and shall submit plans, drawings and specifications as required by Section 42-1721, Idaho Code, for information purposes only; ( )

c. Every municipal or quasi-municipal corporation; ( )

d. Every public utility; ( )

e. Every person, firm, association, organization, partnership, business, trust, corporation or company; ( )

f. The duly authorized agents, lessees, or trustees of any of the foregoing; ( )

g. Receivers or trustees appointed by any court for any of the foregoing. ( )

10. Alterations, Repairs or Either of Them. Only such alterations or repairs as may directly affect the safety of the mine tailings impoundment structure or reservoir, as determined by the Director. ( )

11. Enlargement. Any change in or addition to an existing mine tailings impoundment structure or reservoir, which raises or may raise the storage capacity of the structure, as defined in Rule Subsection 010.06. ( )

12. Days Used in Establishing Deadlines. Calendar days including Sundays and holidays. ( )

13. Certificate of Approval. A certificate issued by the Director for the mine tailings impoundment structure listing restrictions imposed by the Director, and without which no new mine tailings impoundment structures shall be allowed to impound mine tailings slurry or water and no existing impoundment shall be allowed to impound water or continue deposition of mine tailings slurry. The structure will be recertified following the site inspection scheduled according to the Hazard Classification assigned by the Department, unless the Director determines that the structure is unsafe. ( )

14. Engineer. A registered professional engineer, licensed as such by the state of Idaho. ( )

011. -- 024. (RESERVED)

025. AUTHORITY OF REPRESENTATIVE (RULE 25).

When plans, drawings and specifications are filed by another person on behalf of an owner, written evidence of authority to represent the owner shall be filed with the plans, drawings and specifications. ( )

026. -- 029. (RESERVED)

030. FORMS (RULE 30).
Forms required by these rules. ( )

01. Samples of Forms. Samples of all forms required by these rules are available from the Department to interested parties upon request. ( )

02. Form 1721. Construction of a mine tailings impoundment structure requires the filing of Form 1721. ( )

031. -- 034. (RESERVED)

035. PLANS, DRAWINGS, AND SPECIFICATIONS (RULE 35).
The following provisions shall apply in submitting plans, drawings, and specifications. ( )

01. Submission of Plans, Drawings, and Specification. Any owner who shall desire to construct, or enlarge, or alter or repair any mine tailings impoundment structure shall submit duplicate copies of plans, drawings, and specifications prepared by an engineer for the proposed work to the Director with required fees. An owner who desires to construct a continuously raised tailings impoundment structure shall submit duplicate copies of plans, drawings, and specifications prepared by an engineer, showing the stages of lift height, by periods of time, and ultimate design height. ( )

02. Application for and Receipt of Written Approval. Construction of a new mine tailings impoundment structure or enlargement, or non-emergency alteration or repairs on existing mine tailings impoundment structures shall not be commenced until the owner has applied and obtained written approval of the plans, drawings, and specifications covering the work. In emergency situations, the owner shall make the required alterations or repairs necessary to relieve the emergency, and notify the Director. ( )

03. Preparation and Submission of Plans. Plans must be prepared on a good grade of tracing linen or a good quality vellum or mylar. Transparent copies reproducible by standard duplicating processes, if accurate, legible and permanent, will be accepted. Plans may initially be submitted in the form of nonreproducible paper prints. After reviewing the plans, the Director will notify the owner of any required changes. ( )

04. Scale of Plans and Drawings. Plans and drawings shall be of sufficiently large scale with an adequate number of views and proper dimensions, so that drawings may be readily interpreted and studied. ( )

05. Dimensions of Plans. All sheets for a set of plans shall have an outside dimension of twenty-four by thirty-six (24 x 36) inches. A margin of two (2) inches on the left-hand end and a margin of one-half (1/2) inch on the other three sides must be provided, making the available work space twenty-three (23) x thirty-three and one-half (33 1/2) inches. ( )

06. Plans. The plans shall include the following: ( )

a. A topographic map of the mine tailings impoundment structure site showing the location of the proposed mine tailings impoundment structure by section, township and range, and location of spillway or diversion structures, outlet works, and all borings, test pits, borrow pits; ( )

b. A profile along the mine tailings impoundment structure axis showing the locations, elevations, and depths of borings or test pits, including logs of bore hole and/or test pits; ( )

c. A maximum cross-section of the mine tailings impoundment structure showing elevation and width of crest, slopes of upstream and downstream faces, thickness of any proposed riprap, zoning of the earth embankment (if any), location of cutoff and bonding trenches, elevations, size and type of decant systems, valves, operating

mechanism, and dimensions of all other essential structural elements such as cutoff walls, filters, embankment zones, etc.; ( )

d. Detailed drawings describing the outlet system, i.e., decant line, barge pump system, siphon system; ( )

e. If a spillway is used, a curve showing the discharge capacity in cubic feet per second of the spillway vs. gage height of the storage pool level above the spillway crest up to the maximum high-water level, and the formula used in making such determinations; ( )

f. If a stream diversion is created, a tabulation of the discharge capacity in cubic feet per second of any diversion works and of the diversion channel vs. flow depth through the diversion works or channel up to maximum capacity of the system, and the formulas used in making such determinations; ( )

g. Where staged construction will take place and no spillway exists, a curve showing maximum safe operating level for the tailings as a function of embankment height and the design criteria used to arrive at this; ( )

h. Detailed plans, including cross-sections and profile, of the spillway or diversion works and any associated channels; ( )

i. Plans for monitoring and/or recovering seepage from the reservoir in those instances where safety of the impoundment may be affected; ( )

j. An operation plan; ( )

k. An emergency procedure plan for protection of life and property; ( )

l. An abandonment plan that assures the Director to his satisfaction that, upon completion of the mining operation, the site will be in a safe maintenance-free condition. ( )

07. Specifications. Specifications shall include provisions acceptable to the Director for adequate observation, inspection and control of the work by a registered professional engineer during the period of construction. ( )

08. Provision Included with Plans. The specifications shall provide that the plans and specifications may not be materially changed without prior written consent of the Director. ( )

09. Provisions Included with Specifications. The specifications shall provide that certain stages of construction shall not proceed without the approval of the Director. Those stages requiring approval are as follows: ( )

a. After clearing and excavation of foundation and prior to placing any fill material; ( )

b. After installation of the decant conduit and any proposed collars and before placing any backfill material around conduit; ( )

c. After construction is completed (first stage starter dike if staged construction) and before any water or mine tailings slurry is stored in the reservoir; ( )

d. Before each successive enlargement of the impoundment structure; ( )

e. After each stage of enlargement of the impoundment structure is completed and before storage is allowed to exceed the level approved for the previous approved stage; ( )

f. At such other times as determined necessary by the Director. The Director will, within seven (7) days after notification by the engineer, inspect and if satisfactory, approve the completed stage of construction.

Owners are encouraged to give prior notice to the Department, so that the inspection can be scheduled to prevent delays. ( )

10. Inspections, Examinations, and Tests. All materials and workmanship may be subject to inspection, examination and test by the Director at any and all reasonable times during manufacture and/or construction and at any and all places where such manufacture and/or construction are carried on. ( )

11. Rejection of Defective Material. The Director shall have the right to require the owner or engineer to reject defective material and workmanship or require its correction. Rejected workmanship shall be corrected and rejected material shall be replaced with proper material. ( )

12. Suspension of Work. The Director may order the engineer to suspend any work that may be subject to damage by climatic conditions. ( )

13. Responsibility of Engineer. These provisions shall not relieve the engineer of his responsibility to assure that construction is accomplished in accordance to approved plans and specifications or to suspend work on his own motion. ( )

14. Detailing Provisions of Specifications. The specifications shall state in sufficient detail, all provisions necessary to ensure that construction is accomplished in an acceptable manner and provide needed control for construction to ensure that a safe structure is constructed. ( )

15. Required Information. The following information shall be submitted with the plans and specifications. ( )

16. Engineer's Report. An engineer's report giving details necessary for analysis of the structure and appurtenances. Included as a part of the report where applicable shall be the following: ( )

a. Formulas and assumptions used in designs; ( )

b. Hydrologic data used in determining runoff from the drainage areas; ( )

c. Engineering properties of each type of material to be used in the embankment and of the foundation areas; ( )

d. Stability analysis, including an evaluation of overturning, sliding, upstream and downstream slopes and foundation stability; ( )

e. Geologic description of reservoir area, including evaluation of landslide potential; ( )

f. Chemical analysis of all materials composing the slurry; ( )

g. Earthquake design loads must be evaluated at all sites located east of Range 22 E., Boise Meridian. This area corresponds to Seismic Zone 3 as designated by the Recommended Guidelines of the National Dam Safety Program. Earthquake analysis may be required at other impoundment structure sites if deemed necessary by the Director; ( )

h. A seepage analysis of the embankment and reservoir bottom; ( )

i. A hydraulic analysis of the outlet system and spillway, diversion work or diversion channel; ( )

j. Engineering properties and the weathering characteristics of the proposed tailings to be stored in the impoundment; ( )

k. Other information which would aid in evaluating the safety of the design. ( )

17. Filing of Additional Information. The Director may require the filing of such additional

information which in his opinion is necessary to assess safety or waive any requirement herein cited if in his opinion it is unnecessary. ( )

036. -- 039. (RESERVED)

040. BONDING (RULE 40).
An active surety bond or other means of acceptable surety payable to the Director of the Department of Water Resources shall be on file with the Director throughout the active life of the tailings disposal site. The purpose of this bond is to provide a means by which the tailings impoundment can be placed in a safe maintenance-free condition if abandoned by the owner without conforming to an abandonment plan approved by the Director. ( )

01. Filing of Bond. The bond shall be filed prior to any issuance by the Director of a certificate of approval for use of the mine tailings impoundment structure to impound mine tailings slurry and shall run for the approval period covered on the certificate of approval. ( )

02. Provisions of Bond. Bond provisions shall provide that the surety may be held liable for a period of up to five (5) years following notice of default on the bond. ( )

03. Amount of Bond. The bond amount will be set by the Director and is subject to revision each time it is renewed. The owner must obtain approval for the amount of his surety bond prior to each renewal. ( )

04. Cost Estimate Submitted by Engineer. In order to provide a basis for setting the bond amount, the engineer shall submit a cost estimate acceptable to the Director, together with conceptual details needed to arrive at the estimate, for abandonment of the facility at each proposed stage of its construction. ( )

05. Current Costs for Abandonment. Bond amount will be based on current costs for abandonment of the facility based on the approved cost estimate for abandonment at the present construction condition or the next approved proposed stage, whichever represents the larger bond amount. ( )

06. Determination of Bond Amount. If the final abandonment is determined to be the most costly condition, the owner may elect to use this as a basis for bonding throughout the life of the project. The Director may, however, revise the bonding amount to reflect updated costs when he feels it is necessary in order to maintain a realistic bond. ( )

07. Filing Initial Bond. The initial bond shall be filed upon completion of the first stage of construction and before the required certificate of approval is issued to allow storage of mine tailings slurry in the impoundment. No certificate of approval shall be renewed prior to filing by the owner of a bond renewal in an amount approved by the Director. ( )

08. Filing Copy of Performance Bond. Upon the filing of a copy of a performance bond with the Director, covering the terms and conditions of a state of Idaho mineral lease or an approved reclamation plan, in which these documents specify compliance with a plan of restoration of all mining operations, including the tailings impounding structure, the Director may determine the bond required of this section has been met, if the amount of the bond accurately reflects the cost associated with the abandonment plan provided by the owner. ( )

041. -- 044. (RESERVED)

045. MINE TAILINGS IMPOUNDMENT STRUCTURES DESIGN CRITERIA (RULE 45).
The following minimum design criteria shall be used for all mine tailings impoundment structures designed for installation in Idaho. These limitations are intended to serve as guidelines for a broad range of circumstances, and engineers should not consider them as a restriction to the use of other sound design criteria. Deviation from this established criteria will be considered by the Director in approving plans and specifications. ( )

01. Embankment Slopes. ( )

a. For construction of borrowed fill embankments, in the absence of a stability analysis, the slopes

shall be:

Upstream slope	2:1 or flatter
Downstream slope	2:1 or flatter

( )

b. Construction by the upstream method shall not be used in the area of the state east of Range 22 E., Boise Meridian, unless the engineer can provide evidence that the construction and operation of the tailings impoundment will achieve a relative density of sixty percent (60%) or greater in the embankment and tailings to prevent liquefaction during earthquake loading. ( )

c. Safety factors for the embankment shall be at least one and five-tenths (1.5) for static loads and a minimum of one (1) for the static plus the appropriate earthquake load. ( )

d. To insure sufficient permeability and stability of the embankment, designs will require utilizing materials other than the tailings, when the tailings materials: ( )

i. Contain greater than seventy-five percent (75%) passing the #200 standard U.S. sieve, or fifty percent (50%) passing the #325 standard U.S. sieve; ( )

ii. Contain phosphate clays; ( )

iii. The design calls for the water to be impounded against the embankment; ( )

iv. Have other properties which makes them unsuitable for use as construction materials. ( )

e. Embankments designed for the storage of hazardous levels of radioactive materials shall, in addition to any requirements of these regulations, meet the criteria outlined in the Nuclear Regulatory Commission Regulatory Guide 3.11 and the Idaho Radiation Control Regulations administered by the Idaho Department of Environmental Quality. ( )

f. The design shall consider the need for drains and/or operational procedures to promote consolidation and insure that a low phreatic surface is maintained within the embankment. Drainage pipe shall not be used beneath embankments where excessive or differential settlement may cause failure of the pipes and subsequent piping of the tailings or embankment. When the quality of the mine tailings slurry is such that it will adversely affect the quality of the existing ground water, the design should be coordinated with the Department and the Department of Environmental Quality to insure that all applicable permits are obtained. ( )

g. Instrumentation of the embankment and/or foundation will be required to insure that the structure is functioning satisfactorily. Standpipe piezometers with an inside diameter greater than one-half (1/2) inch will not be acceptable for use in fine-grained or cohesive soils in order to minimize response time. ( )

h. Tailings impoundment structures which are constructed using the tailings shall not be constructed or raised during freezing weather to prevent frost lenses in the embankment. Sufficient freeboard must be provided during the summer construction season if the disposal operation is to continue during the winter. ( )

i. If tailings are to be discharged during times of freezing weather and the embankment is to be constructed using either the upstream or centerline method, the pond shall be of sufficient size to insure that any ice formed in the tailings pond area melts during the next warm season. ( )

02. Top Width Embankment. ( )

a. In the absence of a stability analysis, the minimum top width for mine tailings impoundment structures shall be:

W = 2 (H to 1/2 power) + 4, minimum

W = Top width
H = Embankment height ( )

b. The minimum top width for any tailings embankment is ten (10) feet. ( )

03. Cutoff Trenches or Walls. ( )

a. Cutoff trenches, if needed, shall be used to bond the fill through relatively pervious material to an impervious stratum or zone. The bond area shall extend up the abutments to the maximum high water or tailings impoundment elevation. Cutoff (keylock) trenches which are to be backfilled with compacted fill shall be wide enough to allow the free movement of excavation and compaction equipment. Side slopes shall be no steeper than 1:1 for depths up to twelve (12) feet, and no steeper than one and one-half (1 1/2) to one (1) for greater depths to provide for proper compaction. Flatter slopes may be required for safety and stability. ( )

b. Concrete cutoff walls may be used to bond fills to smooth rock surfaces in a similar manner as cutoff trenches and they shall be entrenched in the rock to a depth approximately one-half (1/2) the thickness of the cutoff wall. Concrete cutoff walls shall be doweled into the rock a minimum of twelve (12) inches with a maximum spacing of eighteen (18) inches for three-quarter (3/4) inch steel dowels. Concrete walls shall have a minimum projection of three (3) feet perpendicular to the rock surface and shall have a minimum thickness of twelve (12) inches. ( )

04. Borrowed Fill Embankment. ( )

a. The approved earth materials (silt soils are seldom acceptable) shall be zoned as shown in the plans and placed in the embankment in continuous, approximately level layers. Compaction shall be based on ASTM D-698 for cohesive soils and a minimum compaction of ninety-five percent (95%) of the laboratory Standard Proctor dry density is required. Compaction of cohesionless soils shall insure a relative density of sixty percent (60%) or greater. ( )

b. An acceptable working range of moisture content for the fill material shall be established and maintained. ( )

c. The material shall be compacted by means of a loaded sheepsfoot roller, vibratory roller, or other acceptable means, to the required density. ( )

d. No rock shall be left in the fill material which has a maximum dimension exceeding the lift thickness. The fill material shall be free of brush and organic materials. ( )

e. The fill shall be carried up simultaneously the full design width of the structure, and the top of the fill shall be kept substantially level at all times or slope slightly toward the reservoir. ( )

f. No frozen or cloddy fill material shall be used, and no material shall be place upon frozen, muddy or unscarified surfaces. ( )

g. All materials used in the embankment shall meet all the stability and seepage requirements as shown by a design analysis of the structure and shall be properly installed to meet these requirements. ( )

05. Riprap. ( )

a. All dams shall be protected from wave action. In cases where water is stored directly against the mine tailings impoundment structure or where wave action at maximum pool level during design inflow events would affect the integrity of the embankment, the Director may require use of riprap or other protective measures. ( )

b. If riprap is used the design shall specify the rock size and extent of blanket required to prevent erosion. ( )

06. Outlet Systems. ( )

a. Reservoirs must safely handle the design inflow for all areas draining into the reservoir. This may be done either by storing the entire design inflow or by having an outlet system or combination of systems adequate to safely pass the design inflow. If the tailings reservoir is situated on a stream channel, an outlet system or an approved alternative system capable of meeting downstream flow requirements must be provided. ( )

b. The minimum design inflow for all reservoirs shall be the flood with one percent (1%) probability of occurrence. The Director may require a greater design inflow be used in instances of high hazard, for larger mine tailings impoundment structures, or when the inflow is to be entirely stored in the reservoir during the flood period. ( )

c. The outlet system may be composed of one (1) or a combination of the following: decant line, spillway, or stream channel diversion to bypass the reservoir. The system will be determined by individual reservoir conditions. Unless removal of the mine tailings impoundment structure and reservoir is part of the abandonment plan, the outlet system shall be maintained in perpetuity, unless it is demonstrated that an outlet system is not needed. ( )

d. Outlet systems will not be allowed if their use would release toxic, highly turbid, radioactive or otherwise hazardous flows from the reservoir. In these cases the design inflow must either be entirely stored or diverted around the reservoir. ( )

e. All spillways shall be stabilized to discharge flow through the use of concrete, masonry, riprap or sod, if not constructed in resistant rock. ( )

f. Wherever possible, the spillway shall be constructed independent of the impoundment structure. It shall lead the water far enough away from the mine tailings impoundment structure so as not to endanger the structure. ( )

g. A diversion system must not subject the mine tailings impoundment structure to erosion during the design inflow event. All stream diversions shall conform to the minimum standards for stream channel alterations as written by this Department. ( )

h. Decant conduits, if under the embankment, shall be laid on a firm, stable foundation and normally must not be placed on fill. They shall have a minimum inside diameter of twelve (12) inches and one (1) of the following provisions included in the design: ( )

i. The owner shall have the conduit inspected by photographic or video tape equipment and a copy of the inspection provided to the Department, if a problem is suspected; or ( )

ii. The conduit shall be completely plugged with concrete and/or suitable material, for that portion which extends through the embankment, if a nonrepairable problem occurs within the conduit. The conduit shall consist of material which has been shown to possess the qualities necessary to perform in the environment of the specific tailings impoundment. The design life of the conduit shall be greater than the life of the mine tailings impoundment structure. The portion of the conduit through the embankment shall be completely filled with concrete, or other suitable material, and the riser portion of the conduit capped, upon abandonment of the mine tailings impoundment structure. ( )

i. All decant conduits, if under the embankment, shall have a seepage path through the impervious zone at least equivalent in length to the maximum head above the downstream end of the system. Only one third (1/3) the horizontal distance through the impervious zone will be utilized when calculating the length of the seepage path. Collars may be used to satisfy this requirement, but all collars shall extend a minimum of three (3) feet outside the conduit. Collars shall be spaced at intervals of at least seven (7) times their height and no collar may be closer to the outer surface of the impervious zone than the distance it extends out from the conduit. ( )

j. More than two (2) decant conduits are not to be used, unless special conditions warrant. ( )

07. Freeboard. A minimum freeboard of two (2) feet plus wave height (H) shall be provided on the

crest of the mine tailings impoundment structure during passage of the design inflow.

H = 1.95 (F to 1/2 power)
F = Fetch in miles across water surface at a design maximum level. ( )

08. Records. All instrumentation shall be read and recorded on a regular basis, and all records must be available for inspection by Department personnel on request. ( )

09. Inspection and Completion Reports. ( )

a. It is the responsibility of the engineer to submit test reports along with periodic inspection and progress reports to the Director. ( )

b. Upon completion of each approved stage of construction, a letter shall be sent to the Director, giving a short, narrative account covering all items of work. As-built plans shall be submitted to the Director if the completed project was substantially changed from the plans originally approved. ( )

10. Abandonment. An abandonment plan which provides a stable, maintenance-free condition when the mine tailings impoundment is no longer being regularly maintained by the owner or the owner has ceased to use the site for disposal of mine tailings slurry, shall be submitted to the Director by the owner. The plan shall provide a safe condition by providing for removal of the tailings, or construction of a maintenance-free spillway or diversion works where needed to accommodate runoff. The plan shall include provisions to prevent water storage behind, and erosion of, the mine tailings impoundment structure and the impounded tailing. A conceptual plan which includes an engineering design report, detailed enough to provide the required cost estimate for bonding purposes, will be required prior to the approval of the proposed project. Detailed construction plans must be approved by the Director prior to implementation of any abandonment work. The Director shall notify the owner upon acceptance of completion of abandonment in accordance with the approved plan. ( )

046. -- 049. (RESERVED)

050. DAMS STORING TAILING AND WATER (RULE 50).
Construction of dams intended to store water in excess of the water being decanted in the tailing placement operation shall also meet the requirements for water storage reservoirs specified in the Department's Rules for the Safety of Dams. The Director may waive any or all of these requirements if, in the opinion of the Director, sound engineering design supplied by the owner indicates such requirements are not applicable. ( )

051. -- 054. (RESERVED)

055. PROVISIONS OF CHAPTER 17, TITLE 42, IDAHO CODE (RULE 55).
The provisions of Sections 42-1709 through 42-1721, Idaho Code, are a part of these rules. ( )

056. -- 999. (RESERVED)

IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES / IDAHO WATER RESOURCE BOARD

37.03.06 – SAFETY OF DAMS RULES

DOCKET NO. 37-0306-2201 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis (CBA)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. This action is authorized pursuant to Sections 42-1710 and 42-1714, Idaho Code.

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

This rule establishes acceptable standards for the construction of new and existing regulated dams and to establish guidelines for the inspection and safety evaluation of new or existing dams. The rules apply to all new dams, to existing dams to be enlarged, altered, or repaired, and maintenance of certain existing dams, as specifically provided in the rules.

The pending rule incorporates amendments to the definition and regulation of hazard classification, changes to seismic analyses requirements for new and existing dams, changes to emergency action plan requirements, changes to construction requirements for new dams, and removal of Rule 65 Dams Storing Tailings and Water.

The text of the pending fee rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 5, 2022, Idaho Administrative Bulletin, Vol. 22-10, pages 894–908.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

This rule establishes the collection of a fee to review plans, drawings, and specifications pertaining to the construction, enlargement, alteration, or repair of regulated dams, as set forth in Idaho Code §§ 42-1712 and 42-1713.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Mathew Weaver at mathew.weaver@idwr.idaho.gov, (208) 287-4800.

DATED this 14th day of November, 2022.

Gary Spackman, Director
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, ID 83720
Phone: (208) 287-4800

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized pursuant to §§ 42-1710 and 42-1714, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rule.

The Idaho Department of Water Resources (IDWR) and the Idaho Water Resource Board (IWRB) (the "Agencies") initiated this rulemaking in compliance with Executive Order No. 2020-01, Zero-Based Regulation (ZBR) (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, must be reviewed by the promulgating agency over a five-year period. This review is being conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at https://adminrules.idaho.gov/forms_menu.html. This rule chapter was scheduled for review in 2022.

With this Notice, the Agencies propose a new chapter of safety of dams rules. The new chapter is approximately 12% shorter than the existing safety of dams rule chapter due to both internal agency analysis and external stakeholder negotiation, commentary, and editing. Changes to the rule come through a combination of (a) removal of obsolete provisions (such as removal of unique design requirements for small dams), (b) removal of unnecessary provisions (such as the definition and use of the term "active storage" and "water storage elevation"), (c) reconciling inconsistencies between current statutory requirements and outdated requirements in the old rule concerning the inspection intervals of some dams, and (d) modifications to existing rules governing the size limits, hazard categories, and design requirements for various dams.

Pursuant to the ZBR process, this Notice represents the promulgation of a new rule chapter. As a result, the proposed rule does not contain strike-out/underline text in legislative format. The old rule has been repealed and replaced in its entirety. However, the development of the proposed rule text through two publicly-released preliminary rule draft iterations may be viewed at: https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2022-2023/. At the same website, the Agencies also developed and published rulemaking support documents, which provide the Agencies' recommendations on rulemaking, rulemaking analysis, and responses to substantive comments received through the negotiated rulemaking process.

Citizens of the state of Idaho, water users, governmental agencies, and environmental groups may be interested in commenting on the proposed rule text. After consideration of public comments received in response to this Proposed Rule, the Agencies will present the final rule text to the Idaho Legislature in the late fall of 2022.

FEE SUMMARY: The following is a specific description of the fee or charge imposed:

IDAPA 37.03.06 establishes acceptable standards for construction of dams and establishes guidelines for safety evaluation of new or existing dams. The Rule applies to all new dams, to existing dams to be enlarged, altered or repaired, and maintenance of certain existing dams, as specifically provided in the Rule. This chapter also establishes the collection of a fee to review plans, drawings, and specifications pertaining to the construction, enlargement, alteration, or repair of small high-risk, intermediate, or large dams.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A.

NEGOTIATED RULEMAKING: Pursuant to § 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 4, 2022, Idaho Administrative Bulletin, Vol. 22-5, page 86-87.

INCORPORATION BY REFERENCE: Pursuant to § 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this proposed rulemaking, contact Mathew Weaver at mathew.weaver@idwr.idaho.gov, (208) 287-4800.

Anyone can submit written comments regarding this proposed rule by mail to the address below or by email sent to rulesinfo@idwr.idaho.gov. The Department will consider all written comments received by the undersigned on or before October 26, 2022.

Dated this 2nd day of September, 2022.

THE FOLLOWING IS THE TEXT OF ZBR FEE DOCKET NO. 37-0306-2201

Substantive changes have been made in the pending rule.
Italicized red text **indicates changes between the text of the proposed rule as adopted in the pending rule.**

37.03.06 – SAFETY OF DAMS RULES

000. LEGAL AUTHORITY.
These rules are adopted pursuant to Chapter 17, Section 42-1714, Idaho Code. ( )

001. SCOPE.
These rules establish acceptable standards for design and construction, and guidelines for evaluating the safety of new or existing dams. The rules apply to all new construction including existing structures considered for enlargement, alteration, modification, or repair as specifically provided in the rules. The Director will evaluate any deviation from the standards hereinafter stated as they pertain to the safety of any given dam. The standards listed herein are not intended to restrict the application of other sound engineering design principles that will provide for the public safety. Under no circumstances shall these rules be construed to deprive or limit the Director of any exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount or character of data, or information which may be required by the Director from any owner of a dam or for the proper administration of the law. ( )

002. ADMINISTRATIVE APPEALS.
Any person aggrieved by an action of the Director and who has not previously been afforded an opportunity for a hearing on the matter is entitled to a hearing before the Director to contest the action pursuant to the provisions of Section 42-1701A(3), Idaho Code, and the Department's adopted Rules of Procedure. ( )

003. – 009. (RESERVED)

010. DEFINITIONS.
Unless the context otherwise requires, the following definitions govern these rules. ( )

01. Alterations or Repairs. Any activity that may affect the safety or integrity of a dam. Alterations and repairs do not include routine maintenance items. ( )

02. Appurtenant Structures. Ancillary features (e.g., outlets, tunnels, gates, valves, spillways, auxiliary barriers, etc.) used for operation of a dam, which are owned or for which the owner has responsible control. ( )

03. Artificial Barrier or Embankment. Any structure constructed to impede, obstruct, or store water. ( )

04. Borrowed Fill Embankment. Any embankment constructed of borrowed earth materials, and which is designed for construction by conventional earth moving equipment. ( )

05. Certificate of Approval. A certificate issued by the Director for all existing dams listing restrictions imposed by the Director, and without which none shall be allowed to impound water. ( )

06. Conduit. A pipe or other constructed conveyance within a dam designed to release water or liquid in the reservoir. ( )

07. Core. A zone of relatively low permeability material within an embankment. ( )

08. Cutoff Trench. An excavation later to be filled with *impermeable* material during construction of a dam to limit seepage beneath the structure and through the foundation. *( )*

09. Dam. Any artificial barrier together with appurtenant works, which is or will be ten (10) feet or more in height and has or will have an impounding capacity at maximum storage elevation of fifty (50) acre-feet or more. Height of a dam is defined as the vertical distance from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the Director, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum water storage elevation. Under Section 42-1711, Idaho Code, the following are not included as regulated dams or are not considered dams for the purposes of Sections 42-1710 through 42-1721, Idaho Code: ( )

a. Barriers in a canal used to raise or lower water therein or divert water therefrom. ( )

b. Fills or structures determined by the Director to be designed primarily for highway or railroad traffic. ( )

c. Fills, retaining dikes or structures less than twenty (20) feet in height, which are under jurisdiction of the Department of Environmental Quality or the Department of Agriculture, determined by the Director to be designed primarily for retention or treatment of municipal, livestock, or domestic wastes, or sediment and wastes from produce washing or food processing plants. ( )

d. Levees, that store water regardless of storage capacity. ( )

10. Days. Calendar days including Sundays, Saturdays, and holidays. ( )

11. Department. The Idaho Department of Water Resources. ( )

12. Design Evaluation. The engineering analysis required to evaluate the performance of a dam relative to earthquakes, floods, or other site-specific conditions anticipated to affect the safety or operation of the dam, or appurtenant facilities. ( )

13. Director. The Director of the Department of Water Resources. ( )

14. **Embankment**. An artificial barrier constructed of earth, sand, rock, or gravel used to impound water. ( )

15. **Emergency Action Plan (EAP)**. A written plan with instructions to be taken to reduce the potential for property damage and loss of life in an area affected by a dam failure or uncontrolled release of stored contents. ( )

16. **Enlargement**. Any change in or addition to an existing dam which raises or may raise the elevation of the contents impounded by the dam. ( )

17. **Factor of Safety**. A ratio of available shear strength to shear stress, required for stability. ( )

18. **Flashboards**. Structural members of timber, concrete, steel, or other erosion resistant material placed across a channel or entrance to a spillway to temporarily raise the surface level of the reservoir. ( )

19. **Flood**. An increase in water surface elevation due to naturally occurring runoff or other rise in water levels that result in the inundation of areas not normally covered by water. As defined herein floods may be expressed in terms of average annual probability of exceedance, corresponding to values which may be described as flow rate, volume, or elevation (i.e., stage). ( )

20. **Flood Surcharge**. A variable volume of water temporarily detained in a reservoir, in the space (or part thereof) that is filled by excess runoff or flood water, above the approved design maximum storage elevation. Flood surcharge is passed through the reservoir and discharged downstream until the reservoir level has been drawn down to the design maximum storage elevation. ( )

21. **Freeboard**. Vertical height between the maximum design water surface elevation and the lowest elevation along the top of the dam. Freeboard can include a provision for variables such as wave height, flood surcharge, settlement, and flashboards. ( )

22. **Hazard *Classification***. The potential *adverse incremental* consequences to downstream life, property*, and the environment* resulting from *the release of water or stored content due to* dam failure *or mis-operation of the dam*, exclusive of the size or the physical condition of the dam. Hazard Classifications shall be assigned to new and existing dams *based on potential adverse incremental impacts in three categories: downstream development, estimated loss of life, and economic losses*. *( )*

23. **Hydraulics**. The *study of the* conveyance of liquid through pipes and channels. *( )*

24. **Hydrology**. The study of precipitation, snowmelt, and runoff in relation to land surfaces. ( )

25. **Inflow Design Flood (IDF)**. The flood specified for designing a dam, or appurtenant facility. Commonly expressed inflow design flood(s) include peak rate(s) of flow and volume(s) associated with floods having an annual exceedance probability of one percent (1%) (i.e., Q100) and zero point two percent (0.2%) (i.e., Q500), and the PMF (probable maximum flood). ( )

26. **Intermediate Dams**. Artificial barriers twenty (20) feet or more in height but less than forty (40) feet *or* capable of storing one hundred (100) acre-feet of water or more but less than four thousand (4,000) acre- feet. *( )*

27. **Large Dams**. Artificial barriers forty (40) feet or more in height or capable of storing four thousand (4,000) acre-feet or more of water. ( )

28. **Levee**. A retaining structure alongside a natural lake which has a length two hundred (200) times greater than its greatest height measured from the lowest elevation of the toe to the maximum crest elevation of the retaining structure. ( )

29. **Lift Construction**. Embankment enlargement by raising the elevation of the structure on a

continuous or recurring basis. Such practice will be considered under construction until the structure reaches its final crest elevation. ( )

30. Maximum Water Storage Elevation. The maximum design elevation of the water surface or stored contents which can be impounded by the dam. ( )

31. Operation Plan. A specific plan that promotes the safe operation of the dam for its intended purpose, and which provides specific limits and procedures for controlling inflow, storage, and/or release of water or slurry. ( )

32. Owner. Includes any of the following who own, control, operate, maintain, manage, or propose to construct a dam, or reservoir: ( )

a. The state of Idaho and its departments, agencies, institutions, and political subdivisions; ( )

b. The United States of America and any of its departments, bureaus, agencies and institutions; provided that the United States of America shall not be required to pay any of the fees required by Section 42-1713, Idaho Code, and shall submit plans, drawings and specifications as required by Section 42-1712, Idaho Code, for information purposes only; ( )

c. Every municipal or quasi-municipal corporation; ( )

d. Every public utility; ( )

e. Every person, firm, association, organization, partnership, business trust, corporation, or company; ( )

f. The duly authorized agents, lessees, or trustees of any of the foregoing; or ( )

g. Receivers or trustees appointed by any court for any of the foregoing. ( )

33. Professional Engineer. A person licensed as a professional engineer by the Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors under chapter 12, title 54, Idaho Code. For the purposes of this rule, the use of the term engineer implies a professional engineer consistent with this definition. ( )

34. Release Capacity. The ability of a dam to pass excess water through the spillway(s) and outlet works*, including the contribution from any designed conveyance through or around the dam*. *( )*

35. Reservoir. Any basin which contains or will contain the water impounded by a dam. ( )

36. Small Dams. Artificial barriers ten (10) feet or more in height but less than twenty (20) feet in height and that store fifty (50) acre-feet or more but less than one hundred (100) acre-feet of water. ( )

37. Spillway. A constructed channel *or other approved feature* over, through, or around a dam, which is designed to accommodate the *net* inflow design flood and thus prevent overtopping by the reservoir. *( )*

38. Storage Capacity. The total storage in acre-feet at the maximum design storage elevation. ( )

011. – 014. (RESERVED)

015. AUTHORITY OF REPRESENTATIVE.
When plans, drawings, and specifications are filed by another person on behalf of an owner, written evidence of authority to represent the owner shall be filed with the plans, drawings, and specifications. ( )

016. – 019. (RESERVED)

020. DAM SIZE CLASSIFICATION.

01. Size Classification. The following table defines the height and storage capacity limits used by the Department to classify dams regulated for the benefit of public safety:

Dam Size Classification	Height		Storage Capacity
Small Dams and Reservoirs	Ten (10) feet or more but less than twenty (20) feet	and	Fifty (50) acre-feet or more but less than one hundred (100) acre-feet.
Intermediate Dams and Reservoirs	Twenty (20) feet or more but less than forty (40) feet	*or*	One hundred (100) acre-feet or more but less than four thousand (4,000) acre-feet.
Large Dams or Reservoirs	Forty (40) feet or more	or	Four thousand (4,000) acre-feet or more.

( )

02. Determination of Size. The Director shall determine the size *classification* of a new or existing dam. *( )*

021. – 024. (RESERVED)

025. HAZARD CLASSIFICATION.

01. Hazard Classification. The following table describes categories of hazard used by the Department to classify dams relative to the potential failure consequences estimated for downstream locations. The listed hazard *classifications* are meant to serve as guidelines for implementing design, construction, and operation criteria, subject to final interpretation by the Director:

Hazard *Classification*	Downstream Development	Estimated Loss of Life	Economic Losses
Low	Undeveloped property, no permanent or permanently occupied structures for human habitation.	No loss of life	Low economic loss*es generally limited to the owner; low* damage to or disruption of *transportation, utilities, or other public facilities or values including environmental loss.*
Significant	No concentrated urban development, 1 or more permanent structures for human habitation within the flood zone that are potentially inundated with flood water at a depth of *less than* two (2) feet.	Loss of life is unlikely to occur	*Moderate* damage to agricultural, commercial, or industrial facilities; *moderate* damage to or the disruption of transportation, utilities, or other public facilities or values including environmental loss.
High	Urban development, or any structure for permanent or temporary human habitation which are potentially inundated with flood water at a depth *of* two (2) feet *or greater*.	High probability for loss of life	*Severe* damage to agricultural, commercial, or industrial facilities; damage to or the *prolonged* disruption of transportation, utilities, or other public facilities or values including environmental loss.

( )

02. Determination of Hazard Classification. The Director shall determine the hazard *classification* of a new or existing dam *governed by these rules*. *Hazard classifications shall be assigned to new and existing dams based on the severity of failure consequences exclusive of the size or the physical condition of the dam. The designated hazard classification, as established by the Director, shall determine the applicable design and operational standards applied to the dam*. *( )*

026. – 029. (RESERVED)

030. FORMS.
Forms required by these rules are available from the Department to interested parties upon request. ( )

031. – 034. (RESERVED)

035. DESIGN REPORTS, DRAWINGS, AND SPECIFICATIONS.
The following provisions shall apply when submitting plans, drawings, reports, and specifications for dams to the Director for design review and approval, prior to commencing construction. ( )

01. Submission of Duplicate Plans, Drawings and Specifications. Any owner desiring to construct, enlarge, alter, or repair any dam, shall submit duplicate plans, drawings and specifications prepared by an engineer for the proposed work to the Director with required fees for approval prior to commencing construction. ( )

02. Applying for and Obtaining Written Approval. Construction of a new dam, or the enlargement, alteration, or repair of such shall not commence until the owner has applied for and obtained written approval of the plans, drawings, and specifications from the Director. ( )

03. Preparation and Submission of Plans. Plans and drawings shall be of a sufficient scale with an adequate number of views showing proper dimensions, so that the plans and drawings may be readily interpreted and so that the structure and appurtenances can be built in conformance with the approved design. Plans and drawings shall be submitted in both printed and digital format, with the printed version consisting of paper size eleven by seventeen (11 x 17) inches. After reviewing the plans, the Director will notify the owner of any required changes. ( )

04. Information Included with Plans. Plans for new dams or the enlargement, alteration, or repair of such shall include as much of the following information as determined necessary by the Director to adequately describe the enlargement, alteration, or repair and the effect on the existing structure or its appurtenances: ( )

a. A topographic map of the project site showing the location of the proposed construction by section, township and range, and location of all borings, test pits, borrow pits and other locations of samples obtained for field or laboratory testing; ( )

b. A profile depicting the locations, elevations, and depths of borings or test pits, including the visual illustration of logs of bore holes, test pits, or borrow pits; ( )

c. A cross-section of the structure at maximum section showing elevation and width of crest, slopes of upstream and downstream faces, thickness of riprap, zoning of earth embankment, location of cutoff and bonding trenches, elevations and dimensional heights, size and type of conduits, valves, operating mechanism, and dimensions of all other essential elements deemed to be necessary for properly constructing the approved design; ( )

d. Detailed drawings showing plans, cross and longitudinal sections of appurtenant features such as but not limited to the spillway, training walls, outlet conduits, valves, gates, trash rack, and control works; ( )

e. A curve or table showing the capacity of the reservoir or tailings impoundment in acre-feet vs. gauge height referenced to a common project datum and the computations used in making such determinations; ( )

f. A curve or table showing the outlet discharge capacity in cubic feet per second vs. gauge height of reservoir storage level, and the computations used in making such determinations; ( )

g. A curve or table showing the spillway discharge capacity in cubic feet per second vs. gauge height of the reservoir or flood surcharge level above the spillway crest and the computations used in making such determinations; ( )

h. Detailed drawings of spillway structure(s), including cross-sections of the channel entrance and exit points to and from the spillway and a spillway profile; ( )

i. Plans for flow measuring devices capable of providing an accurate determination of the flow of the stream above or below the reservoir, and a permanent reservoir or staff gauge near the outlet of the reservoir plainly marked in feet and tenths of a foot referenced to an approved datum; and ( )

j. Plans or drawings of instruments recommended by the owner or engineer to monitor the performance of the dam to assure safe operation, or as may be required by the Director as deemed necessary to monitor any structure for benefit of public safety regardless of size. ( )

05. Specifications. The engineer shall prepare specifications that include instructions for construction of the approved design in accordance with accepted engineering and industry standards of care, including provisions for adequate observation, inspection, and control of the work by an engineer during the period of construction.( )

06. Changes to the Approved Design. The approved design shall not be materially changed without prior written consent of the Director. Design changes which may affect the stability, size, or integrity of the structure, while construction is underway, shall be submitted for the Director's review and approval. In emergency situations, the owner shall make the required alterations or repairs necessary to relieve the emergency, and subsequently notify the Director of all alterations or repairs implemented. ( )

07. Inspections. The owner shall allow inspections by the Department to assure the dam and appurtenant structures are constructed in conformance with the approved plans and specifications, or as may be revised by the engineer and approved by the Director if there are unforeseen conditions discovered during site preparation or construction which potentially jeopardize the future integrity and safety of the project works. The Department may request of the owner that certain stages of construction not proceed without inspection and approval by the Director. ( )

08. Inspection, Examination and Testing of Materials. All materials and workmanship shall be subject to review, inspection, examination, or testing by the Director. ( )

09. Rejection of Defective Material. The Director may order the owner or engineer to reject defective material. The owner shall correct rejected workmanship and replace rejected material with approved material. ( )

10. Suspension of Work. The Director may order the engineer to suspend any work that is or is likely to be subject to damage by inclement weather conditions. ( )

11. Responsibility of Engineer. These provisions shall not relieve the engineer of their responsible charge to assure that construction is accomplished in accordance with their approved plans and specifications as mandated by Sections 54-1202(10) and (15), Idaho Code, or to unilaterally suspend work as deemed necessary. ( )

12. Design Report. Owners proposing to construct, enlarge, alter, or repair a dam shall submit an engineering or design evaluation report to accompany the plans and specifications. The engineering report shall include as much of the following information as necessary to present the technical basis for the design and to describe the analyses used to evaluate performance of the structure and appurtenances. ( )

a. All technical reference(s), equations, calculations, and assumptions used in the design. ( )

b. Hydrologic data used in determining runoff from the drainage areas, reservoir flood routing pertinent to the project location, and hydraulic evaluations of the outlet(s) and the spillway(s) as may be required for approval of the design plans and specifications. ( )

c. Investigation of site and subsurface conditions, to include the engineering properties of the foundation area and of each type of material to be encountered or used in the construction of the project works. ( )

d. A stability analysis, including an evaluation of overturning, sliding, slope, and foundation stability; *( )*

i. An evaluation of seismic design loads may be included in the stability analysis for all dams as deemed necessary by the Director for benefit of public safety. The evaluation required for the design of large dams or high hazard structures shall use the maximum ground acceleration which could affect the dam. *In the absence of a site-specific seismic hazard analysis, the Director may accept seismic analyses that reference published seismic hazard maps which determine seismic loads estimated for seismic events corresponding to a return interval of two percent (2)% in fifty (50) years.* *( )*

ii. Seismic analyses may be waived by the Director for new or existing dams if the consequence of failure is demonstrated to be sufficiently low or the critical features of design are demonstrated to be sufficiently conservative to allow minor deformation(s) without releasing the contents of the impounding structure. ( )

e. Geologic description of *the dam and* reservoir area, including evaluation of landslide potential *near the dam*; *( )*

f. Engineering properties and the weathering characteristics of the contents proposed for storage in the impoundment, if applicable; ( )

g. Other information which would aid in evaluating the safety of the design. ( )

13. Additional Information/Waiver. The Director may require the filing of such additional information which in *their* opinion is necessary for the benefit of public safety or waive any requirement in these rules if available data demonstrates that it is unnecessary. *( )*

14. Alternate Plans. The Director may accept plans and specifications for dams, or portions thereof prepared for other agencies which are determined to meet the requirements of Rule 35, including but not limited to the following: ( )

a. An operation plan; or ( )

b. An emergency action plan to help protect *or mitigate the consequences of a dam failure on* downstream life and property. *( )*

036. – 044. (RESERVED)

045. EMERGENCY ACTION AND OPERATION PLANS.
An Emergency Action Plan (EAP) is required for all Significant and High Hazard dams. The EAP shall establish emergency procedures for notification and response during unexpected or non-routine events that occur naturally, or in response to mechanical issues, or due to intentional vandalism *or* terrorism. The EAP may be a component of an Operation Plan that includes comprehensive guidelines and procedures for inspection, operation, maintenance, and monitoring of instruments required to record performance of the structure during normal operating cycles, critical filling, or flood periods, or as may be necessary for evaluating the effects of an earthquake. Before the initial filling of a reservoir, the owner shall file with the Director an EAP for review and approval. *( )*

046. – 049. (RESERVED)

050. NEW DAMS AND RESERVOIRS.

The following criteria shall be used by the Director as a basis to evaluate the design of new embankment dams and reservoirs. These guidelines are intended for a broad range of circumstances, and engineers should not consider them as a restriction to the use of other sound engineering design principles. Exclusion from these established criteria will be considered by the Director on a case-by-case basis during design review of plans, drawings, reports, and specifications submitted for approval prior to commencing construction. Structures which are or will be constructed of other materials, for example concrete, timber, steel, or combinations thereof shall comply with these criteria as found appropriate by the Director, and with other engineering design methods and construction standards of care approved by the Director. ( )

01. Embankment Stability. Slope stability analyses shall determine the appropriate upstream and downstream slopes. Unless a discrete slope stability analysis determines otherwise, the embankment slopes of earthen dams shall comply with the following:

Upstream slope	3:1 or flatter
Downstream slope	2.5:1 or flatter

( )

a. Embankments shall be designed, constructed, and maintained to assure stability under static loads and prevent instability due to seepage or uplift forces, rapid drawdown conditions, and applied seismic loads. ( )

b. The design analysis shall consider the need for installing filters, including but not limited to chimney drains, blanket drains, or toe drains, to avoid developing saturated conditions and *to* protect against piping of the embankment fill material. Transmission of seepage through the embankment, abutments, and foundation shall be controlled to prevent internal erosion*,* the removal of material*, or the creation of* instability. *( )*

c. The minimum factor of safety for a steady state loading condition shall be one point five (1.5.) The minimum factor of safety for rapid drawdown loading shall be one point two (1.2.) The minimum factor of safety for seismic loading shall be one point zero (1.0.) ( )

d. Seismic Stability. ( )

i. The stability of an embankment subjected to earthquake ground motions may be analyzed by the engineer using either a dynamic response or pseudo-static analyses. Pseudo-static analyses are acceptable for embankment dams and foundations composed of non-liquifiable soils that preclude the generation of excess pore water pressures due to shaking. Otherwise, the stability analysis shall employ a dynamic response method. ( )

ii. Slope deformation analyses are required for structures that are constructed of cohesionless soils exhibiting fine grain-size gradation and/or on foundations that may be subject to liquefaction. ( )

iii. The design analysis for *regulated* dams shall include in the *seismic* stability analysis peak ground accelerations obtained from Seismic Hazard Maps published by the United States Geologic*al* Survey (USGS) using a minimum return interval of 2 percent (2%) probability of exceedance in fifty (50) years, or greater interval, as determined by the Director. *( )*

iv. The design analyses for large and high hazard dams shall include a report or report(s) covering geology, geologic hazard, and seismicity. The report(s) shall identify the location of faults, evaluate landslide potential, and include a history of seismicity. A comparison using deterministic and probabilistic analyses to calculate peak ground acceleration at the dam site may be required for geographic areas of the state showing evidence of seismic faults or faulting, as determined by the Director. ( )

e. Where in the opinion of the Director, embankment design or conditions warrant, the owner may be required to instrument their embankment or foundation. ( )

02. Top Width. The minimum top width for any embankment shall be twelve (12) feet to allow safe

access by wheeled vehicles or tracked equipment for maintenance or repair. ( )

03. Cutoff Trenches or Walls. Cutoff trenches shall be excavated into competent foundation material to bear on an approved stratum or zone*, as site conditions require and when employed*. *( )*

a. The cutoff trench shall be backfilled with suitable material free from organic matter and debris and compacted to the specified moisture and density. The cutoff trench shall extend up the sides of both abutments to the design maximum storage elevation. ( )

b. Cutoff trenches shall be wide enough to allow the free movement of excavation and compaction equipment. To provide for proper compaction side slopes shall be no steeper than one to one (1:1) for shallow depths up to twelve (12) feet, and no steeper than one and one half to one (1.5:1) for greater depths. Flatter slopes may be required for safety and stability, as determined by the Director. ( )

c. Concrete cutoff walls may be used in a similar manner as cutoff trenches, with the base firmly entrenched in the underlying foundation material. Where suitable bedrock or suitable foundation material exists, concrete cutoff walls shall be doweled with steel rebar a minimum depth and spacing determined by the engineer necessary to create a structural bond with the underlying foundation. Concrete walls shall have a minimum vertical projection above the foundation surface of three (3) feet, oriented perpendicular to the surface, and shall have a minimum thickness of twelve (12) inches. Reinforcement of the concrete may be required in addition to being doweled into suitable foundation material(s). ( )

04. *Impermeable* Core Material. Soils used to construct the inner sectional core of an embankment shall consist of relatively *impermeable* cohesive materials approved by the engineer and compacted in strict accordance with the approved plans and specifications. A minimum ninety-five percent (95%) maximum dry density compacted in accordance with the American Society Testing Materials (ASTM) D-698 is required. The use of other relatively impermeable however non-cohesive material is subject to approval by the Director on a case-by-case basis. *( )*

05. Drains. Toe, blanket, or chimney drains consisting of approved free draining material or approved manufactured drainage geotextile shall be installed where necessary to maintain the phreatic line at or near the design level(s) within the embankment. ( )

a. Filter design for toe, blanket, or chimney drains, or any combination thereof shall be included in the design plans and specifications submitted by the engineer for review and approval by the Director. ( )

b. Perforated and slotted drainpipes must be four (4) inches diameter or greater and shall be surrounded by permeable drainage material *to a distance* equal to or greater than the outside pipe diameter. The maximum particle size of the drainage material shall be between one-half (1/2) inch to three-fourths (3/4) inch*, or as specified by the design engineer based on the drainage filter analysis*. Underdrains and collection pipes must be constructed of noncorrosive material, taking care to ensure slots and perforations are appropriately sized to avoid long-term migration of the drain material into the pipe. *( )*

06. Freeboard. The elevation of the top of the embankment shall be constructed and maintained above the design flood surcharge level, including the vertical height of wind generated waves estimated for the greatest distance of open water measured perpendicular to the major axis of the dam. Camber estimated for post-construction settlement shall be included in the design and incorporated in the construction of the top of the embankment. ( )

a. The minimum freeboard shall be two (2) feet plus wave height as calculated for the design spillway flow capacity during passage of the one percent (1%) flood, or greater. *( )*

07. Riprap. All embankments which are subject to erosion on either the upstream and downstream slope(s) shall be protected using riprap or other approved material. Pipes, cables, brush, tree growth, dead growth, logs, or floating debris are not acceptable substitutes for approved riprap. The engineer, with approval of the Director, shall determine the extent of slope protection as deemed necessary for existing site, seasonal, and operating conditions. ( )

a. Where rock riprap or other approved material is used for erosion protection on the upstream slope, it shall be placed on an approved thickness of well-graded and free-draining granular bedding material. Riprap or other approved erosion protection material shall extend up the slope a sufficient height. ( )

08. Outlet Conduits. All reservoirs impounding water shall have an outlet conduit of sufficient capacity to prevent interference with natural streamflow through the reservoir to the injury of downstream appropriators. In addition to any natural flow releases, the outlet conduit should be of sufficient capacity to pass at the same time, the maximum water requirement of the owner. A larger outlet conduit may be required to provide adequate release capacity as determined by the Director. *Upon recommendation n of the design engineer, the Director may waive this requirement for off channel reservoirs.* *( )*

a. Outlet conduits shall be laid on a firm and stable foundation material to avoid the likelihood of differential settlement or consolidation causing the separation or misalignment of the conduit. Outlet conduits shall be encased on all sides by concrete of approved compressive strength and having a minimum thickness of twelve (12) inches. During construction outlet conduits shall be properly aligned on an established grade and adequately supported to prevent movement or damage caused by placement of concrete or by compaction equipment. ( )

b. Unless otherwise required, the outlet conduit shall have a minimum inside diameter of twelve (12) inches. The conduits shall consist of approved material and composition as approved by the Director. Exceptions may be made only where conditions warrant, but in no case shall the reasonable life expectancy of the pipe be less than the design life of the embankment. ( )

09. Gates and Valves. ( )

a. Conduits shall be gated on the upstream end to avoid pressurizing the conduit inside the embankment. *Designed pressurized* conduits shall be fitted with both a guard gate and a control gate or valve. *( )*

b. All conduits shall be vented directly behind the gate. ( )

c. All gate stem pedestals shall be securely founded to prevent future movement. ( )

d. At least one (1) of the sides of the inlet structure shall be open to allow water to flow into the outlet conduit. The opening shall be covered with a trash rack. ( )

e. Trash racks should be designed to facilitate cleaning of trash and debris. If fish screens are used, they shall be placed over the trash rack and shall be removable for cleaning or be self-cleaning. ( )

10. Outlet Controls. Outlet controls shall be installed at a stable location, on the crest or on an elevated platform, or within an enclosure when required, but secured to prevent unauthorized operation. Reservoirs storing water during the winter and subject to severe freezing conditions shall have inclined gate stems or other controlling mechanical or hydraulic features enclosed in a protective sleeve which is buried beneath the upstream slope to suitable depth, to prevent damage or movement caused by ice. ( )

11. Release Capacity. Based on the size of the dam and the downstream hazard classification assigned by the Director, the release capacity shall equal or exceed the inflow design flood as set forth in the following table. Where the table specifies an inflow design flood range, the governing inflow design flood shall be determined by the professional engineer in responsible charge of design and IDWR based on a site-specific review of the proposed dam, watershed conditions, and downstream hazard potential. The minimum flow capacity of the emergency spillway(s) shall be sized using the one-percent (1%) rate of flow (i.e., Q100 cfs) calculated for the contributing watershed upstream from the dam, plus two (2) feet of freeboard, plus wave height.

Hazard Classification	*Dam* Size Classification	Inflow Design Flood (IDF)
Low	All Sizes	Q100
Significant	Small	Q100

Hazard Classification	*Dam* Size Classification	Inflow Design Flood (IDF)
	Intermediate	Q100 to Q500
	Large	Q500
High	Small	Q100 *to Q500*
	Intermediate	Q500
	Large	Q500 to PMF

( )

a. All spillways shall be stabilized for the discharge of flow using concrete, masonry, riprap, or sod, if not constructed in resistant rock. ( )

b. For embankment dams, where site conditions allow, the spillway shall be constructed independent of the embankment. The spillway(s) shall guide the discharge of water away from the embankment. ( )

c. The minimum base width of an open-channel spillway shall be ten (10) feet, or greater to allow access by mechanical equipment. Siphon pipes or pumps are not acceptable substitutes for an open-channel spillway. ( )

d. The effective flow capacity of spillways shall be undiminished by bridges, fences, pipelines, or other obstructions. ( )

e. The installation of stop logs or flashboards in the spillway is prohibited unless they are part of an approved design and included as an integral part of an approved operation plan. ( )

12. Reservoir Site. Prior to filling the reservoir, the site shall be cleared of all woody material, growth or debris that is large enough to lodge in the spillway, or outlet works. ( )

13. Inspection and Completion Reports. As construction proceeds, it is the responsibility of the engineer to submit test reports (e.g., soil material analyses, density tests, concrete strength tests, etc.) along with periodic inspection and progress reports to the Director. ( )

a. Upon completion of construction the owner or *their* engineer shall provide the Director a written narrative account of all items of construction. Record drawings (i.e., as-builts or as-constructed drawings) and revised specifications shall be submitted to the Director to accurately reflect the completed project works. *( )*

b. The engineer, acting on behalf of and representing the owner, shall certify that the construction, reconstruction, enlargement, replacement, or repair of the embankment and appurtenances was completed in accordance with the record drawings and specifications. ( )

051. – 059. (RESERVED)

060. EXISTING DAMS AND RESERVOIRS.
All dams and reservoirs regulated by the Department shall be operated and maintained to retain the existing structural dimensions, to resist deformations or movement, and to maintain the hydraulic capacity of the outlet works, spillway, and other discharge features as designed and constructed, or as otherwise required by these rules. ( )

01. Analyses Required. The analyses required by Rule 035 shall apply to all existing dams when the Director specifically requires the analyses. Where applicable, non-embankment dams shall comply with the following criteria. ( )

a. Every dam shall have an overflow spillway with a capacity that will pass an inflow design flood of one percent (1%) probability of occurrence (i.e., Q100) or more, with the reservoir or the impoundment full to the

spillway crest while maintaining the freeboard required by Rule 050.06. ( )

b. The Director may lessen or waive the spillway requirement for dams that demonstrate out-of-stream (off-channel) storage. ( )

c. The release capability or discharge capacity can include the combined rates of flow for multiple appurtenances; for example, spillways, outlets, diversion facilities, or other constructed conveyance features. Approved operating procedures which can be shown to utilize upstream storage, diversion, and reservoir flood routing to reduce flood runoff events may also be considered. The remainder of the required release capacity, if any, may be met by the following: ( )

i. Reconstruction, enlargement or addition of spillways, outlets, diversion facilities, or other constructed conveyance features. ( )

ii. A showing acceptable to the Director that potential failure of the dam during a flood of the specified magnitude described in Rule 050.11 would be incrementally small in comparison to the flood being considered, and that the release of reservoir would not substantially increase downstream damages to life and property which are anticipated to result from any natural flood equal to or exceeding that magnitude. ( )

iii. A showing acceptable to the Director that limiting physical factors unique to the project site exist that prevent construction of a spillway or other release capability mechanisms during a flood of the specified magnitude described in Rule 050.11, and provided the owner implements storage operational procedures, or restrictions, or provides for emergency warning to protect life and property. ( )

d. Seismic loads shall be evaluated and applied to dam stability. The Director may require that evaluation of seismic loads for large and high hazard structures shall use the maximum ground motion/acceleration generated by the maximum credible earthquake. *For any existing dam, the* Director may accept maximum ground motion/acceleration corresponding to specified return intervals using a probabilistic evaluation of earthquake history in accordance with USGS hazard maps *using a minimum return interval of 2 percent (2%) probability of exceedance in fifty (50) years, or greater interval, as determined by the Director*. *( )*

e. The Director may accept existing studies relative to requirements of Rule 060.01.a. and Rule 060.01.d., if the Director determines the information provided fulfills the requirements of the rules. ( )

f. The Director may allow the owner of an existing dam a compliance period to complete structural modifications or implement other improvements deemed necessary to provide the necessary hydraulic capability. ( )

g. The Director may allow the owner of an existing dam a compliance period to complete structural modifications or implement other improvements deemed necessary to resolve seismic stability or safety concerns. ( )

h. Within thirty (30) days after completing the analyses required in Rules 060.01.a. or 060.01.d., the owner of an existing dam found deficient by either analyses shall file with the Director a plan and schedule for mitigating the deficiency. ( )

02. Other Requirements. ( )

a. Routine maintenance items include the following: ( )

i. Eradication of rodents and filling animal burrows; ( )

ii. Removal of vegetation and debris from the dam; ( )

iii. Restoring original dimensions of the dam by the addition of fill material; ( )

iv. Addition of bedding or riprap material which will not increase the height or storage capacity;

( )

v. Repair or replacement of gates, gate stems, seals, valves, lift mechanisms or vent pipes with similar equipment; or ( )

vi. Repair or replacement of wingwalls, headwalls or aprons including spalling concrete. ( )

b. The following are not routine maintenance items and are subject to design review and approval prior to commencing construction: ( )

i. Alteration or modification of embankment slopes; ( )

ii. Replacement, reconstruction, or extension of outlets; ( )

iii. Foundation stabilization; ( )

iv. Filter or drain construction or replacement; ( )

v. Spillway size alteration or modification; ( )

vi. Installation of instrumentation or piezometers; or ( )

vii. Release capability or reservoir storage modification. ( )

c. Items not specifically described in Rules 060.02.a. and 060.02.b. will be determined by the Director as either routine or non-routine upon receipt of a written request from the owner or *their* representative seeking such a determination. *( )*

d. Where riprap is required to prevent erosion and to maintain a stable embankment, pipes, cables, brush, tree growth, logs, or floating debris are not acceptable substitutes for rock riprap and granular bedding material. Dams or portions thereof which are stable without riprap, are not required to have riprap. ( )

e. Upon completion of reconstruction of a dam or feature of a dam included in Rule 060.02.b., the owner or *their* engineer shall provide the Director a written narrative account of all items of work. Record drawings and revised specifications shall be submitted to the Director if the completed project has been substantially changed from the plans and construction specifications originally approved. *( )*

f. Upon request, the owner of every dam shall provide *their* name and address to the Director and shall advise the Director of future changes in ownership. If the owner does not reside in Idaho, the owner shall provide the name and address of the person residing in Idaho who is responsible for the operation, maintenance, and repair of the dam. *( )*

061. – *999*. (RESERVED)

IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES / IDAHO WATER RESOURCE BOARD

37.03.10 – WELL DRILLER LICENSING RULES

DOCKET NO. 37-0310-2201 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis (CBA)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. This action is authorized pursuant to Sections 42-238, 42-1734(19), and 42-1805(8), Idaho Code.

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

This rule establishes the requirements and procedures for obtaining and renewing authorization to drill wells in the state of Idaho. The rule also establishes the requirements and procedures for obtaining authorization to operate drilling equipment under the supervision of a licensed driller. The rule is applicable to all individuals and companies drilling or contracting to drill wells.

There are no changes to the pending fee rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 5, 2022, Idaho Administrative Bulletin, Vol. 22-10, pages 909–919.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

IDAPA 37.03.10 establishes the requirements and procedures for obtaining and renewing authorization to drill wells in the state of Idaho. The rules also establish the requirements and procedures for obtaining authorization to operate drilling equipment under the supervision of a licensed driller. The licensing rules are applicable to all individuals and companies drilling or contracting to drill wells. The rules also implement the application licensing fees set forth in Idaho Code, § 42-238.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Mathew Weaver at mathew.weaver@idwr.idaho.gov, (208) 287-4800.

DATED this 14th day of November, 2022.

Gary Spackman, Director
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, ID 83720
Phone: (208) 287-4800

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized pursuant to §§ 42-238, 42-1734(19), and 42-1805(8), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rule.

The Idaho Department of Water Resources (IDWR) and the Idaho Water Resource Board (IWRB) (the "Agencies") initiated this rulemaking in compliance with Executive Order No. 2020-01, Zero-Based Regulation (ZBR) (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, must be reviewed by the promulgating agency over a five-year period. This review is being conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at https://adminrules.idaho.gov/forms_menu.html. This rule chapter was scheduled for review in 2022.

With this Notice, the Agencies propose a new chapter of well driller licensing rules. The new chapter is approximately 30% shorter than the existing well driller licensing rule chapter due to both internal agency analysis and external stakeholder negotiation, commentary, and editing. Changes to the rule come through a combination of (a) removal of obsolete provisions (such as Rule 21 Construction and Use of Holes that are Not Wells), (b) removal of unnecessary provisions (such as the definition and use of the term "responsible charge"), and (c) modifications to existing rules governing the "experience requirements" to obtain a well drilling license.

Pursuant to the ZBR process, this Notice represents the promulgation of a new rule chapter. As a result, the proposed rule does not contain strike-out/underline text in legislative format. The old rule has been repealed and replaced in its entirety. However, the development of the proposed rule text through two publicly-released preliminary rule draft iterations may be viewed at: https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2022-2023/. At the same website, the Agencies also developed and published rulemaking support documents, which provide the Agencies' recommendations on rulemaking, rulemaking analysis, and responses to substantive comments received through the negotiated rulemaking process.

Citizens of the state of Idaho, water users, governmental agencies, and environmental groups may be interested in commenting on the proposed rule text. After consideration of public comments received in response to this Proposed Rule, the Agencies will present the final rule text to the Idaho Legislature in the late fall of 2022.

FEE SUMMARY: The following is a specific description of the fee or charge imposed:

IDAPA 37.03.10 establishes the requirements and procedures for obtaining and renewing authorization to drill wells in the state of Idaho. The rules also establish the requirements and procedures for obtaining authorization to operate drilling equipment under the supervision of a licensed driller. The licensing rules are applicable to all individuals and companies drilling or contracting to drill wells. The rules also implement the application licensing fees set forth in Idaho Code § 42-238.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A.

NEGOTIATED RULEMAKING: Pursuant to § 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 6, 2022, Idaho Administrative Bulletin, Vol. 22-4, pages 51-52.

INCORPORATION BY REFERENCE: Pursuant to § 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this proposed rulemaking, contact Mathew Weaver at mathew.weaver@idwr.idaho.gov, (208) 287-4800.

Anyone can submit written comments regarding this proposed rule by mail to the address below or by email sent to rulesinfo@idwr.idaho.gov. The Department will consider all written comments received by the undersigned on or before October 26, 2022.

Dated this 2nd day of September 2022

THE FOLLOWING IS THE TEXT OF ZBR FEE DOCKET NO. 37-0310-2201

37.03.10 – WELL DRILLER LICENSING RULES

000. LEGAL AUTHORITY (RULE 0).
Section 42-238, Idaho Code. ( )

001. SCOPE (RULE 1).
These rules establish the requirements and procedures for obtaining and renewing authorization to drill wells in the state of Idaho. The rules also establish the requirements and procedures for obtaining authorization to operate drilling equipment under the supervision of a licensed driller. The licensing rules are applicable to all individuals and companies drilling or contracting to drill wells. ( )

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).
Unless the context otherwise requires, the following definitions govern these rules. ( )

01. **Abandonment**. See Decommissioned Well. ( )

02. **Applicant**. An individual who submits to the Department a complete application for a license or operator's permit or a company that submits a complete application for a license. ( )

03. **Area of Drilling Concern**. An area designated by the director in accordance with Section 42-238, Idaho Code, within which special drilling procedures and equipment are needed to prevent waste or contamination of the ground water. ( )

04. **Board**. The Idaho Water Resource Board. ( )

05. **Bond**. A cash or surety bond obtained by a licensed driller or company (the principal) payable to the director (the obligee) to provide funding for decommissioning or repair should the driller fail to comply with well construction standards, and to allow information to be collected concerning the drilling of the well if the driller fails

to submit a timely, accurate driller's report. ( )

06. Bottom Hole Temperature of an Existing or Proposed Well. The temperature of the ground water encountered in the bottom of a well or borehole. ( )

07. Company. A firm, co-partnership, corporation, or association licensed in accordance with these rules to drill or contract to drill wells. ( )

08. Compliance History. An applicant's record of compliance with the laws and rules of Idaho and other states relating to drilling of wells. ( )

09. Continuing Education. Education or training pertinent to the drilling industry and the construction, modification or decommissioning of wells. ( )

10. Continuing Education Committee (CEC). A committee whose purpose is to review and approve activities related to continuing education credit. ( )

11. Decommissioned (Abandoned) Well. Any well which has been permanently removed from service and filled or plugged in accordance with these rules. A properly decommissioned well will not: ( )

a. Produce or accept fluids; ( )

b. Serve as a conduit for the movement of contaminants inside or outside the well casing; or ( )

c. Allow the movement of surface or ground water into unsaturated zones, into another aquifer, or between aquifers. ( )

12. Department. The Idaho Department of Water Resources. ( )

13. Director. The director of the Idaho Department of Water Resources or his duly authorized representative. ( )

14. Drilling or Well Drilling. The act of constructing a new well, or modifying the construction, or decommissioning of an existing well. ( )

15. Drilling Permit. Authorization by the Department to drill a well as provided in Section 42-235, Idaho Code. ( )

16. Drilling Site. The location of the drill rig and immediate area where the drill rig and auxiliary equipment are set up to drill a well. ( )

17. Global Positioning System (GPS). A global navigational receiver unit and satellite system used to triangulate a geographic position. ( )

18. License. A certificate issued by the director to an individual or a company upon meeting the requirements of Section 42-238, Idaho Code, and these rules authorizing the drilling of wells permitted in accordance with Section 42-235, Idaho Code. ( )

19. Licensed Driller. An individual having a license to drill wells and who is authorized to supervise operators in the state of Idaho to assure compliance with well construction standards. ( )

20. Modify. To deepen a well, increase or decrease the diameter of the casing or the well bore, install a liner, place a screen, perforate existing casing or liners, alter the seal between the casing and the well bore, or alter the well from its original construction. ( )

21. Operator. Any person authorized to operate drilling equipment for a licensed company or licensed driller after obtaining an operator's permit from the Director. ( )

22. Operator's Permit. A certificate issued by the director upon meeting the requirements of Section 42-238, Idaho Code, and these rules authorizing the holder to operate drill equipment. ( )

23. Principal Driller. A licensed driller designated by a company to supervise the company's drilling operations and activities. ( )

24. Start Card. An expedited drilling permit for the construction of cold-water Single Family residential wells. ( )

25. Well. An artificial excavation or opening in the ground more than eighteen (18) feet in vertical depth below land surface by which ground water of any temperature is sought or obtained. The depth of a well is determined by measuring the maximum vertical distance between the land surface and the deepest portion of the well. Any water encountered in the well is obtained for the purpose of these rules. Well also means any waste disposal and injection well as defined by Section 42-3902, Idaho Code. ( )

26. Well Construction Standards. IDAPA 37.03.09, "Well Construction Standards Rules," adopted by the board. ( )

27. Well Driller's Report or Driller's Report. A report required by Section 42-238, Idaho Code, describing drilling of the well and supplying information required on forms provided by the Department. ( )

28. Well Log. A diary maintained at the drilling site consistent with Section 42-238, Idaho Code. ( )

29. Well Rig or Drill Rig. Any power-driven percussion, rotary, boring, digging, jetting, augering, or any other power-driven mechanical equipment used in the drilling of a well. ( )

011. -- 019. (RESERVED)

020. LICENSE APPLICABILITY (RULE 20).

01. Wells to be Drilled by Licensed Drillers. A well shall only be drilled by a licensed driller, or an operator working under the supervision of a licensed driller except that a property owner, who is not licensed, can construct a well on his property for his own use without the aid of power-driven mechanical equipment. ( )

02. Operators to Have Permits. Any person authorized to operate drilling equipment under the supervision of a licensed driller shall possess an operator's permit as provided in these rules. ( )

03. Company to be Licensed. No company shall drill or contract to drill a well or wells unless the company has been issued a license and has employed a principal driller as described in accordance with these rules. ( )

04. Decommissioning Wells. Only licensed drillers and operators may decommission wells, except that wells may be decommissioned by the owner after receiving a specific waiver from the Director. ( )

021. -- 029. (RESERVED)

030. OBTAINING A DRILLER'S LICENSE (RULE 30).

01. Experience Requirements. ( )

a. An applicant for a driller's license shall submit evidence to establish a minimum of twenty-four (24) months of drilling experience. Twelve (12) of the twenty-four (24) months of drilling experience must have occurred within the five (5) year period immediately preceding the filing of the application. An applicant will be credited with one (1) month of drilling experience for each one hundred sixty (160) hours of employment as a driller or operator, or the equivalent, as determined by the director. Experience drilling monitoring wells, geothermal wells

or other cased wells will be credited as experience by the Director if the equipment and drilling methods are applicable to water well construction. ( )

02. Application Requirements. An individual desiring a license shall file with the Department a completed application on a form provided by the Department accompanied by the following: ( )

a. The application fee required by Section 42-238, Idaho Code. ( )

b. Written documentation of drilling experience and compliance history. ( )

c. Successful completion of classroom study in geology, well drilling, map reading, and other related subjects may be substituted for up to, but not exceeding, twelve (12) months of drilling experience. The director will determine the number of months of classroom study, up to twelve (12), to be credited as experience. ( )

d. The names and addresses of up to three (3) references to confirm the applicant's drilling experience may be requested at the Department's discretion. ( )

03. Examination. An applicant determined by the director to have adequate experience and an acceptable compliance history, as confirmed by references acceptable to the director, is eligible to take a written examination. ( )

031. OBTAINING A COMPANY LICENSE (RULE 31).

01. Application Requirements. A company shall file with the Department a complete application for a company license upon a form provided by the Department to be accompanied by the following: ( )

a. The names and addresses of up to three (3) persons not affiliated with the company, whom the Department can contact for information regarding the company's past well drilling operations, may be requested at the Department's discretion. ( )

b. Designation of a principal driller who shall be a full-time employee of the company and shall drill wells only for the company. A licensed driller who renders only occasional, part-time or consulting drilling services to or for a company may not be designated as the principal driller. ( )

c. The names and addresses of drillers and operators presently employed. ( )

032. OBTAINING AN OPERATOR'S PERMIT (RULE 32).

01. Experience Requirements. ( )

a. An applicant for an operator's permit shall submit evidence to establish a minimum of 600 hours of well drilling experience acquired while in the presence of a licensed driller or operator. Evidence may include but is not limited to: payroll information, daily logs signed by a licensed driller or operator, or other documentation approved by the Director. ( )

02. Application Requirements. An individual desiring an operator's permit shall file with the Department a completed application on a form provided by the Department accompanied by the following: ( )

a. The fee required by Section 42-238, Idaho Code. ( )

b. Attendance records, completion certificates, or other documents that verify attendance and completion of two (2) continuing education credit hours, approved by the CEC, earned while in training to become an operator. ( )

03. Written Examination. Applicants for an operator's permit shall pass an examination pursuant to these rules. ( )

04. Operator Drills Only for Licensed Driller or Company. An operator shall drill only for the licensed driller or company approved by the director. If an operator changes employment to another licensed driller or company, a new operator's permit application or transfer form shall be filed as provided in this rule. ( )

033. PROCESSING APPLICATION FOR A DRILLER'S LICENSE OR OPERATOR'S PERMIT (RULE 33).

01. Incomplete Application. If an application is incomplete, not properly signed, or does not include the information required by these rules, the Department will advise the applicant in writing of the deficiency. If the deficiencies are not satisfied within ninety (90) days of sending the notice of the deficiency, the application will be void. The application fee is not refundable. ( )

02. Issuance of License. If the director, upon review of the application, determines that an applicant for license is qualified and the driller has subsequently taken and passed an examination, a notice will be sent to the applicant requesting a bond, in an amount determined in accordance with Rule 60, be filed with the Department. Upon receipt of a satisfactory bond, the director will issue a license to the applicant. ( )

03. Issuance of Operator's Permits. The Department will mail a notice and operator's permit card to the principal driller on behalf of the applicant if the application is complete and the applicant meets the qualifications described in these rules. ( )

04. Driller's License or Operator's Permit Issued With Conditions or Denial of License or Operator's Permit. The Director may issue a license or operator's permit with specific conditions or limitations based on the applicant's experience and compliance history. The Director may refuse to issue or renew a driller's license permanently or for a designated period if the driller has previously constructed wells improperly or constructed a well without a valid driller's license. If the Director determines that the applicant is not qualified, the Director will deny the application. Notice of a denied application or a conditioned license or operator's permit will be given to the applicant in accordance with IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." ( )

034. EXAMINATION PROCEDURES (RULE 34).

01. Written Examination. Written examinations will be offered at Department offices on the first Monday of each quarter. If the first Monday is a legal holiday, written examination will be offered on the first Tuesday. Re-examination may be taken at a regularly scheduled examination date during a following quarter and shall be scheduled with the Department office originally testing the applicant. ( )

02. Verbal or Oral Examination. Successful passage of a verbal examination may satisfy all or a part of the written testing requirements under the following circumstances: ( )

a. The applicant requests a verbal examination and shows cause acceptable to the director why the examination should be verbal rather than written. Applicants desiring to take the examination verbally shall request that a verbal examination be scheduled allowing at least fifteen (15) days to set an examination date. ( )

b. The director determines that because of the applicant's compliance history, additional testing is needed to determine the applicant's qualifications. ( )

03. Examination Scoring. A score of seventy percent (70%) or higher is a passing score. ( )

04. Assistance Must Be Authorized. The use of written materials, equipment, or other individuals to assist an applicant during an examination is prohibited unless specifically authorized by the Department. An applicant receiving unauthorized assistance during an examination may be disqualified and the application may be rejected. An application filed by a disqualified applicant will not be processed for a period of up to one (1) year from the time of disqualification. ( )

035. EXPIRATION AND RENEWAL OF DRILLER LICENSES AND OPERATOR PERMITS (RULE 35).

01. Expiration of Licenses and Permits. All driller licenses and operator permits expire at the end of the licensing period for which they are issued. The licensing period begins April 1 and ends March 31 of the second year following issuance. ( )

02. Renewal Application. A license or operator permit may be renewed by submitting a renewal application including the following: ( )

a. A completed application on a form provided by the Department. An application for renewal shall be signed by the principal driller. ( )

b. The renewal fee required by Section 42-238, Idaho Code. ( )

c. A new bond or continuation certificate for an existing bond covering all drillers and operators employed by the company. ( )

03. Continuing Education Requirements. Credit hours not to exceed twenty (20) are required for renewal of a driller license or operator permit for any licensing period. ( )

036. PROCESSING APPLICATION TO RENEW LICENSE OR OPERATOR'S PERMIT (RULE 36).

01. Processing Applications for Renewal. The Department shall receive a complete application for renewal no later than March 15 to assure that the license or operator's permit will remain in force without interruption. If the director determines that the application is complete and the applicant is qualified, the license or operator's permit will be renewed for the period ending on March 31 of the second year after approval of the renewal. ( )

02. Regulatory Compliance Required for Renewals. A license or operator's permit will not be renewed if the applicant has not submitted all required driller's reports, applications for drilling permits, fees, agreed civil penalties, has not complied with all orders requiring repair or decommissioning of improperly constructed wells or is not otherwise in compliance with Sections 42-235 and 42-238, Idaho Code, and the applicable rules. ( )

03. Compliance History. If the Director determines that the applicant has exhibited an unacceptable compliance history, the Director may deny renewal, refuse renewal for a specified time, or renew with conditions, including but not limited to an increased bond amount. ( )

04. Renewal of Expired Licenses or Operator's Permits. A license or an operator's permit which has expired or otherwise not been in effect for a period not exceeding three (3) years shall be renewed in accordance with the requirements of Rule 35. An applicant for renewal shall provide verification of earned credit hours required for the entire period since the license or operator's permit was last issued. If a license or operator's permit has been expired or otherwise not effective for a period of more than three (3) years, a new application shall be submitted in accordance with these Rules. The director may waive the examination requirement if the applicant has been previously licensed or permitted in the state of Idaho. ( )

05. Reuse of Identification Numbers. The identification number assigned to a license by the Department will not be reused if the license has been expired or otherwise not in effect for three (3) years or more except, at the director's discretion, the number may be reissued to the original owner. ( )

06. Condition or Denial of an Application for Renewal. If the Director determines that the applicant has not or cannot fully comply with these rules, a license or operator's permit may be issued with conditions. If the Director determines that the applicant is not qualified or has documented violations of well drilling laws and/or rules, the Director will deny the application. When there are documented violations of well drilling laws and/or rules, including well construction standards, the Director may issue a conditional license or operator's permit or deny an application based on the applicant's compliance history. Notice of a denied application or a conditioned license will be given as provided in IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." ( )

037. -- 049. (RESERVED)

050. DUTIES AND RESPONSIBILITIES OF DRILLERS, COMPANIES AND OPERATORS (RULE 50).

01. Licensed Drillers and Principal Drillers. All licensed drillers and principal drillers shall: ( )

a. Allow drilling only by those authorized by and under the supervision required by these rules and according to any conditions of the license or permit. ( )

b. Complete each well in compliance with IDAPA 37.03.09, "Well Construction Standards Rules," and drilling permit conditions. ( )

c. Maintain a valid cash or surety bond, as defined in Rule 60. ( )

d. Display the driller or company license number in a conspicuous place on the drill rig using a metal identification plate issued by the Department or other permanent marking approved by the director. If requested by the applicant, one plate will be issued upon initial licensure. Replacement plates or additional plates are available for a fee. ( )

e. Keep current the Department's list of operators and drillers employed by the licensed driller or company, including current addresses for the company, drillers, and operators. The licensed driller or principal driller shall be held responsible for all drilling activity of a driller or operator under their supervision until such notification has been submitted in writing to the Department that the driller or operator is no longer employed by the licensed driller or company. ( )

f. Have at the drilling site the driller's license and drilling permit or other written authorization from the director to drill the well. ( )

g. Obtain specific written authorization from the director to drill: ( )

i. In contaminated areas identified by the Department; ( )

ii. In areas of drilling concern designated by the Department; ( )

iii. A public drinking water supply well, as defined in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems"; ( )

iv. Low temperature geothermal resource wells; and ( )

v. Geothermal resource wells. ( )

h. Monitor and record bottom-hole temperature in areas where low temperature geothermal resources are known or suspected or when the well is being constructed pursuant to IDAPA 37.03.09, Rule 30, as a low temperature geothermal resource well. Bottom-hole temperature of every well being constructed pursuant to IDAPA 37.03.09, Rule 30, must be measured, recorded, and reported on the well drillers report. ( )

i. Maintain a daily well log at the drilling site acceptable to the Department and as required by Section 42-238(11), Idaho Code. Pertinent data required to be recorded on the daily log must include information sufficient to complete a well drillers report acceptable to the Director. The driller shall retain the well log for at least one (1) year after the driller's report is submitted to the Department. ( )

j. Submit driller's reports, acceptable to the Director, on forms approved by the Department within thirty (30) days following removal of the drill rig from the drilling site at completion of the well. Driller's reports shall be prepared from information recorded on the daily well log. Driller's reports returned to the driller due to deficiencies must be corrected and returned to the Department within thirty (30) days of mailing by the Department. ( )

k. Attach a well tag supplied by the Department to every well drilled for which a drilling permit is required. The tag shall be affixed permanently to the casing, or other permanent object attached to the well, by a method approved by the Director prior to removing the well rig from the drilling site. ( )

l. Cause all drilling activity under the supervision of the driller to cease when the driller's license expires, becomes invalid, or is suspended or revoked. ( )

02. Companies. Companies shall: ( )

a. Have a principal driller always designated with the Department and keep current the Department's contact information to include a valid phone number for the principal driller. ( )

b. Notify the Department within ten (10) days of the principal driller leaving employment with the company. The company's license shall immediately become void and of no effect when the principal driller leaves employment with the company and shall remain so until the Department has been notified in writing that a new principal driller has been employed and designated by the company. Failure to designate a principal driller within ninety (90) days of the departure of the designated principal driller is cause for the director to take action to cancel the company's license. ( )

c. Always maintain a bond as required in Rule 60. ( )

03. Operators. Operators shall: ( )

a. Have in their possession a valid operator's permit while operating drill rigs or drilling equipment. ( )

b. Only drill wells as authorized by the operator's permit. ( )

c. Maintain a complete and accurate well log at the drilling site. ( )

d. Co-sign a driller's report with the licensed driller upon completion of the well. ( )

051. -- 059. (RESERVED)

060. BONDING (RULE 60).

01. Bonding Requirements. Each licensed company shall submit a surety bond or cash bond in an amount determined by the director, within the limits of 42-238, Idaho Code, covering all drillers and operators employed by the company, payable to the director for the licensing period. If the licensed driller drills wells as an individual and not for a company, a separate bond must be filed with the director. ( )

a. The amount of the bond will be determined by the director based on the applicant's compliance history, the size and depth of wells the applicant proposes to construct and is authorized to drill, the complexity of the wells, the resource to be recovered, the area of operation of the applicant, the number of drillers and operators employed by a company, and other relevant factors. ( )

b. The amount of the bond required prior to drilling in an area of drilling concern, and/or drilling monitoring wells, public water supply wells, or wells with a bottom hole temperature meeting the definition of a low temperature geothermal resource as defined by Section 42-233, Idaho Code, shall be the maximum amount allowed by Section 42-238, Idaho Code. ( )

c. All bonds and continuation certificates shall commence on April 1 or date of licensure for a new company and be valid until March 31 of the year the driller or company license expires. Bonds and continuation certificates must be on a form approved or provided by the Department. ( )

02. Cash Bonds. ( )

a. Cash bonds shall be in a separate account readily accessible to the director for use as provided in these rules. The director will review cash bond proposals made by an applicant. Cash bonds shall be retained in financial institutions within the state of Idaho unless waived by the director. ( )

b. The director will retain cash bonds for two (2) years from the date the driller requests that the bond be released unless replaced by another bond or the director determines that all wells drilled by the driller satisfy well construction standards. The release of a cash bond must be requested in writing. ( )

03. License Void Without Bond. If the surety cancels a bond, the bond expires or otherwise becomes non-effective during the term of a license, the license shall immediately become void and of no further effect until an adequate replacement bond is received by the Department. ( )

061. -- 069. (RESERVED)

070. CONTINUING EDUCATION (RULE 70).

01. Requirements. Every licensed driller or operator must earn the applicable number of credit hours consistent with these rules. The credit hours must be obtained during the licensing period preceding the renewal application. ( )

02. Earning Credit Hours. Credit hours may be earned for time spent in attendance at workshops, seminars, short courses, and other educational opportunities devoted to well drilling or related subjects acceptable to the Director or approved by the continuing education committee (CEC) in compliance with the CEC guidelines. These may include completion of college courses, correspondence courses, or online courses. ( )

03. Documentation. Documentation in support of credit hours is the responsibility of each licensed driller and operator. Records required include but are not limited to: ( )

a. A log showing the type of course or activity, sponsoring organization, duration, instructor's name, and credit hours. ( )

b. Attendance verification records in the form of completion certificates or other official documents providing evidence of attendance and completion. ( )

04. Submittal and Maintenance of Records. Copies of continuing education records for the preceding license period shall be submitted with applications to renew licenses or permits. These records shall be maintained by the applicant for a period of three (3) years and shall be available for review by the Department at the request of the director. ( )

05. Insufficient Credit Hours. If at the time of renewal, the applicant is unable to provide verification of the required credit hours, the director will deny renewal of the driller's license or operator's permit, except as follows: ( )

a. The director may withhold action on an application for renewal for a period not to exceed ninety (90) days to allow the applicant to provide verification of the required credit hours. The applicant is not authorized to drill until the verification is provided and the renewal is issued. ( )

b. The director may exempt an applicant from all or part of the continuing education requirements if the applicant served on active duty in the armed forces of the United States for one hundred twenty (120) consecutive days or more during the licensing period prior to filing the application for renewal; or the applicant suffered physical disability, serious illness, or other extenuating circumstances that prevented the applicant from earning the required units. ( )

06. Out-of-State Residents. The continuing education requirements for a driller's license or operator's permit are the same for both resident and non-resident applicants. ( )

07. Responsibility for Education Development and Implementation. The Department's responsibility to develop and implement a program for continuing education may, at the Director's discretion, be delegated through a memorandum of understanding (MOU) and/or contract to external providers such as the Idaho Ground Water Association (IGWA). ( )

071. -- 089. (RESERVED)

090. ENFORCEMENT (RULE 90).

01. Violations. Violations of these rules or Sections 42-235 or 42-238, Idaho Code, will be enforced as provided in Sections 42-238 and 42-1701B, Idaho Code. ( )

02. Enforcement Procedures. Department procedures and guidance for administrative enforcement are published on the Department's website and available upon request. ( )

091. -- 999. (RESERVED)

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 – RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-2101 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

LINK: LSO Rules Analysis Memo, Incorporation By Reference Synopsis (IBRS), & Cost/Benefit Analysis (CBA)

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2023 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected. However, the deletion of Sections 517 through 527, Motor Vehicle Inspection and Maintenance Program, will not become effective until July 1, 2023; those sections will remain in effect until July 1, 2023.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This rulemaking action is authorized by Sections 39-105, 39-107, 39-114, and 39-115. This rulemaking updates federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of Idaho'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. It also updates citations to other federal regulations necessary to retain state primacy of Clean Air Act programs.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 7, 2022, Vol. 22-9, pages 325 through 488.

After consideration of public comments, sections 002, 006.31, 008.02, 008.04, 009, 387, 791.01, and 794.02 have been revised. The effective date of the deletion of Sections 517 through 527 due to legislative action has been clarified (see Senate Bill No. 1254.) The remainder of the rule has been adopted as initially proposed. The Board meeting documents are available at https://www.deq.idaho.gov/air-quality-docket-no-58-0101-2101/ or by contacting the undersigned.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: Not applicable.

FEE SUMMARY: With exception of the revised Title V permitting fees, this rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in prior rules. The fee categories and statutory authorities are crop residue burn fee, Idaho Code § 39-114(4); and application fee for industrial or commercial air pollution source permits, Idaho Code § 39-115(3).

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the rulemaking, contact the undersigned.

Dated this 7th day of December, 2022

Caroline Moores
Operations Senior Analyst
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706
Phone: (208)373-0149
caroline.moores@deq.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This rulemaking action is authorized by Sections 39-105, 39-107, 39-114, and 39-115. This rulemaking updates federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of Idaho'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. It also updates citations to other federal regulations necessary to retain state primacy of Clean Air Act programs.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222, Idaho Code, a public hearing has been scheduled and will be held as follows:

Public Hearing
Tuesday, October 11, 2022
2:30 p.m. (MT)

In-person participation is available at:
DEQ State Office
1410 N Hilton St
Conference Center
Boise, ID
Or
Join Zoom Meeting
The meeting link is available at: https://www.deq.idaho.gov/air-quality-docket-no-58-0101-2101/

The meeting location will be accessible to persons with disabilities, and language translators will be made available upon request. To request accommodations for language translation, contact the undersigned by October 6, 2022.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking in compliance with Executive Order No. 2020-01, Zero-Based Regulation (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, shall be reviewed by the agency that promulgated the rule. The review will be conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM). This is one of the DEQ rule chapters up for review in 2022.

The goal of the rulemaking is to perform a critical and comprehensive review of the entire chapter in an attempt to reduce overall regulatory burden, streamline various provisions, and increase clarity and ease of use.

This rulemaking updates federal regulations incorporated by reference with the July 1, 2022 Code of Federal Regulations (CFR) effective date. The July 1, 2022 CFR is a codification of federal regulations published in the Federal Register as of July 1, 2022. To ensure that the state rules remain consistent with federal regulations, the Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01, are updated annually to maintain consistency with the federal regulations implementing the Clean Air Act.

This rulemaking also includes the revised fee structure of a Clean Air Act mandated air permitting program negotiated under Docket No. 58-0101-1902. Sections 387 – 397. Major industrial sources of air pollution are required to have a Title V operating permit. In Idaho, the Title V permitting program is administered by DEQ. The Clean Air Act requires these industrial sources to pay on-going annual fees to cover all reasonable costs associated with the Title V permitting program (Clean Air Act 42 USC 7661a(b)(3) and implementation regulation at 40 CFR 70.9). In January 2018, the Idaho National Laboratory (INL) decreased its emissions such that it will no longer be required to

have a Title V operating permit and, therefore, will no longer pay Title V permitting fees. Since the inception of the Title V permitting program, the INL has paid a Title V permitting fee of $500,000, which covered far more than its share of program costs. Without this significant sum, it was necessary for DEQ to negotiate a revision to the current fee structure to ensure there is sufficient funding to cover the costs of administering the Title V program in Idaho.

Other than the incorporation by reference update and the Title V fee structure changes, no substantive changes were made in this proposed rule docket. Because this is the promulgation of a new rule chapter, the proposed rule does not contain strike-out/underline text. A document prepared by DEQ showing the proposed rule revisions in strike-out/underline format can be viewed here.

Members of the regulated community who may be subject to Idaho's air quality rules, facilities with Title V permits, special interest groups, public officials, and members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality (Board) in November 2022 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2023 legislative session if adopted by the Board and approved by the Idaho Legislature.

NEGOTIATED RULEMAKING: The revised Title V fee structure was negotiated under Docket No. 58-0101-1902. In May 2019, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, and the preliminary draft rule was posted on DEQ's website. Meetings were held on May 7, 2019, August 24, 2021, and October 5, 2021.

In October 2021, the Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking for Docket No. 58-0101-2101 was published in the Idaho Administrative Bulletin, and the preliminary draft rule was posted on DEQ's website. Meetings were held on October 28, 2021; November 30, 2021; and March 29, 2022.

Stakeholders and members of the public participated by receiving email notifications, reviewing DEQ's presentations and supporting information, attending meetings, and submitting comments. Key information was posted on DEQ's website and distributed to persons who participated in the negotiated rulemaking.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding the development of the rule. At the conclusion of the negotiated rulemaking process, DEQ inserted the revised Title V fee structure negotiated under Docket No. 58-0101-1902 and submitted the draft rule to DFM for review. DEQ formatted the draft for publication as a proposed rule and is now seeking public comment. The negotiated rulemaking record, which includes the negotiated rule drafts, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at https://www.deq.idaho.gov/air-quality-docket-no-58-0101-2101/.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

Adoption of federal regulations is necessary to maintain program primacy. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rule.

In compliance with Idaho Code 67-5223(4), DEQ prepared a brief synopsis detailing the substantive differences between the previously incorporated material and the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference is available at https://www.deq.idaho.gov/air-quality-docket-no-58-0101-2101/.

IDAHO CODE SECTION 39-107D STATEMENT: There are no changes to this proposed rule that regulate an activity not regulated by the federal government, nor are broader in scope or more stringent than federal regulations.

FEE SUMMARY: With exception of the revised Title V permitting fees, this rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in prior rules. The fee categories and statutory authorities are crop residue burn fee, Idaho Code § 39-114(4); and application fee for industrial or commercial air pollution source permits, Idaho Code § 39-115(3).

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this proposed rulemaking, contact Carl Brown at carl.brown@deq.idaho.gov or (208) 373-0206.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments regarding this proposed rule. The Department will consider all written comments received on or before October 11, 2022. Submit comments to:

Carl Brown
Air Quality Rules & Planning Coordinator
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706
carl.brown@deq.idaho.gov

Dated this 7th day of September, 2022

Substantive changes have been made to the pending rule.
Italicized red text **indicates changes between the text of the proposed rule as adopted in the pending rule.**

THE FOLLOWING IS THE TEXT OF ZBR FEE DOCKET NO. 58-0101-2101

58.01.01 – RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

000. LEGAL AUTHORITY.
The Board of Environmental Quality is authorized to promulgate rules for the Department of Environmental Quality governing air pollution pursuant to Sections 39-105, 39-107, 39-114, and 39-115, Idaho Code. ( )

001. TITLE AND SCOPE.
These rules are titled IDAPA 58.01.01, Rules of the Department of Environmental Quality, IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho" and provide for the control of air pollution in Idaho. ( )

002. WRITTEN INTERPRETATIONS.
The Department of Environmental Quality has written statements that pertain to the interpretation *of* or compliance *with* these rules at 1410 N. Hilton, Boise, Idaho, the Department regional offices, and https://www.deq.idaho.gov.
( )

003. ADMINISTRATIVE APPEALS.
Persons may be entitled to appeal agency actions authorized under this chapter pursuant to IDAPA 58.01.23, "Contested Case Rules and Rules for Protection and Disclosure of Records." ( )

004. (RESERVED)

005. DEFINITIONS.
Definitions in federal statute, federal regulation, and Idaho Code are incorporated by reference unless otherwise listed below. The terms "air contaminant or contamination," "air pollution," "board," "department," "director," "emission," and "person" have the meaning provided for those terms in Section 39-103, Idaho Code. ( )

006. GENERAL DEFINITIONS.

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. ( )

02. Actual Emissions. The actual rate of emissions of a pollutant from an emissions unit as determined below: ( )

a. Actual emissions as of a particular date equal the average rate, in tons per year, at which the unit emitted the pollutant during a consecutive 24-month period that precedes the particular date and is representative of normal source operation. The Department will allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions must be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. ( )

b. The Department may presume that the source-specific allowable emissions for the unit are equivalent to actual emissions of the unit. ( )

c. For any 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 equal the potential to emit of the unit on that date. ( )

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 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. ( )

03. Air Quality. The specific measurement in the ambient air of a particular air pollutant at any given time. ( )

04. Allowable Emissions. The allowable emissions rate of a stationary source or facility calculated using the maximum rated capacity of the source or facility (unless the source or facility is subject to federally enforceable limits that restrict the operating rate, or hours of operation, or both) and the most stringent of the following: ( )

a. The applicable standards set forth in 40 CFR Parts 60, 61, and 63. ( )

b. Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or ( )

c. The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date. ( )

05. Ambient Air. That portion of the atmosphere, external to buildings, to which the general public has access. ( )

06. Ambient Air Quality Violation. Any ambient concentration that causes or contributes to an exceedance of a national ambient air quality standard as determined by 40 CFR Part 50. ( )

07. 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 air pollutant or air pollutants. ( )

08. Commence Construction or Modification. Initiation of physical on-site construction activities on an emissions unit that are permanent. Such activities include, but are not limited to, fabrication, erection, installation, or modification of a stationary source or facility, 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, that mark the initiation of the change. ( )

09. Control Equipment. Any method, process or equipment which removes, reduces or renders less noxious, air pollutants discharged into the atmosphere. ( )

10. 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. ( )

11. Criteria Air Pollutant. Any of the following: PM10; PM2.5; sulfur oxides; ozone, nitrogen dioxide; carbon monoxide; lead. ( )

12. 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. ( )

13. Emission Standard. A permit or regulatory requirement established by the Department or 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 reduction. ( )

14. Emissions Unit. An identifiable piece of process equipment or other part of a facility which emits or may emit any air pollutant. ( )

15. 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 has 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 limits remediation projects to five (5) years or less of total operation. ( )

16. 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. ( )

17. Facility. All of the pollutant-emitting activities that 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 are 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. The fugitive emissions are not considered in determining whether a permit is required unless required by federal law. ( )

18. Federal Land Manager. The Secretary of the department with authority over the Federal Class I Area (or the Secretary's designee). ( )

19. Federally Enforceable. All limitations and conditions which are enforceable by EPA and the Department under the Clean Air Act, including those requirements developed pursuant to 40 CFR Parts 60 and 61 requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Parts 51, 52, 60, or 63. ( )

20. Fuel-Burning Equipment. Any furnace, boiler, or other apparatus, including all stacks and

appurtenances thereto, that burns fuel for the primary purpose of producing heat or power by indirect heat transfer. ( )

21. **Fugitive Dust**. Fugitive emissions composed of particulate matter. ( )

22. **Fugitive Emissions**. Those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. ( )

23. **Gasoline**. Any mixture of volatile hydrocarbons suitable as a fuel for the propulsion of motor vehicles or motorboats. Gasoline also means aircraft engine fuels when used for the operation or propulsion of motor vehicles or motor boats and includes gasohol, but does not include special fuels, which is defined as fuel suitable for diesel engines; a compressed or liquefied gas obtained as a by-product in petroleum refining or natural gasoline manufacture, such as butane, isobutane, propane, propylene, butylenes, and their mixtures; and natural gas, either liquid or gas, and hydrogen, used for the generation of power for the operation or propulsion of motor vehicles. ( )

24. **Gasoline Cargo Tank**. Any tank or trailer used for the transport of gasoline from sources of supply to underground gasoline storage tanks. ( )

25. **Gasoline Dispensing Facility (GDF)**. Any facility with underground gasoline storage tanks used for dispensing gasoline. ( )

26. **Hazardous Air Pollutant (HAP)**. Any air pollutant listed pursuant to Section 112(b) of the Clean Air Act. Hazardous Air Pollutants are regulated air pollutants. ( )

27. **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. ( )

28. **Integral Vista**. A view perceived from within the mandatory Class I Federal Area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal Area. ( )

29. **Mandatory Class I Federal Area**. Any area identified in 40 CFR 81.400 through 81.437. ( )

30. **Mercury Best Available Control Technology (MBACT)**. An emission standard for mercury (including elemental mercury and mercury compounds) based on the maximum degree of reduction practically achievable as specified by the Department on an individual case-by-case basis considering energy, economic and environmental impacts, and other relevant impacts specific to the source. A Department approved MBACT is valid until the source subject to the MBACT is modified. If the proposed modification to the source subject to MBACT occurs within ten (10) years of the MBACT determination, a new MBACT review is not triggered if the source can meet the existing MBACT requirements. If the proposed modification occurs more than ten (10) years after the MBACT determination, then the proposed modification will be subject to a new MBACT review. ( )

31. **Modification**. ( )

a. Any physical change in, or change in the method of operation of, a stationary source or facility that *r*esults in an emission increase as defined in Section 007 or that would result in the emission of any regulated air pollutant not previously emitted. *( )*

b. *Any physical change in, or change in the method of operation of, a stationary source or facility that would* result in an increase in the emissions rate of any state only toxic air pollutant, or emissions of any state only toxic air pollutant not previously emitted. *( )*

c. Fugitive emissions are not considered in determining whether a permit is required for a modification unless required by federal law. ( )

d. Routine maintenance, repair and replacement are not considered physical changes and the following are not considered a change in the method of operation: ( )

i. 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; ( )

ii. An increase in hours of operation if more restrictive hours of operation are not specified in a permit; and ( )

iii. Use of an alternative fuel or raw material if the stationary source is specifically designed to accommodate such fuel or raw material before January 6, 1975, and use of such fuel or raw material is not specifically prohibited in a permit. ( )

32. National Ambient Air Quality Standard (NAAQS). National primary and secondary ambient air quality standards under Section 109 of the Clean Air Act (CAA) are set forth in 40 CFR Part 50 and incorporated by reference in Section 107. Primary standards define levels of air quality that EPA has determined, with an adequate margin of safety, to protect public health. Secondary standards define levels of air quality necessary to protect public welfare from any known or anticipated adverse effects of a pollutant. Pollutants subject to a NAAQS are termed criteria pollutants. Geographic areas are designated as unclassifiable, attainment, or nonattainment of the NAAQS. Section 110 of the CAA and 40 CFR Parts 51 and 52, incorporated by reference in Section 107, requires states to submit state implementation plans to meet, attain, and maintain the NAAQS. ( )

33. New Stationary Source or Facility. ( )

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 ( )

b. The restart of a non-operating facility is considered a new stationary source or facility if: ( )

i. The restart involves a modification to the facility; or ( )

ii. If after the facility has been in a non-operating 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 non-operating facility, then the Department will, within five (5) working days of receipt of the application notify the facility of receipt of the application for a Permit to Construct. To not be considered a new stationary source or facility within thirty (30) working days upon receipt of this notification, the facility must 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. ( )

34. 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. ( )

35. Particulate Matter. Any material, except water in uncombined form, that exists as a liquid or a solid at standard conditions. Emissions are measured by an applicable reference method, or any equivalent or alternative method in accordance with Section 157. PM10 is all particulate matter in the ambient air with an aerodynamic diameter less than or equal to ten (10) micrometers. PM2.5 is all particulate matter in the ambient air with an aerodynamic diameter less than or equal to two point five (2.5) micrometers. ( )

36. Potential to Emit/Potential Emissions. The maximum capacity of a facility or stationary source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the facility or source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, is treated as part of its design if the limitation or the effect it would have on emissions is state or federally enforceable. Secondary emissions do not count in determining the potential to emit of a facility or stationary source. ( )

37. Portable Equipment. Equipment designed to be dismantled and transported from one (1) job site

to another. ( )

38. 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. ( )

39. Regulated Air Pollutant. ( )

a. For purposes of determining applicability of major source permit to operate requirements, issuing, and modifying permits pursuant to Sections 300 through 397, and in accordance with Title V of the federal Clean Air Act amendments of 1990, 42 U.S.C. Section 7661 et seq., "regulated air pollutant" has the same meaning as in Title V of the federal Clean Air Act amendments of 1990, and any applicable federal regulations promulgated pursuant to Title V of the federal Clean Air Act amendments of 1990, 40 CFR Part 70; ( )

b. For purposes of determining applicability of any other operating permit requirements, issuing, and modifying permits pursuant to Sections 400 through 409, the federal definition of "regulated air pollutant" as defined in Subsection 006.39.a. also applies; ( )

c. For purposes of determining applicability of permit to construct requirements, issuing, and modifying permits pursuant to Sections 200 through 227, except Section 214, and in accordance with Part D of Subchapter I of the federal Clean Air Act, 42 U.S.C. Section 7501 et seq., "regulated air pollutant" means those air contaminants that are regulated in non-attainment areas pursuant to Part D of Subchapter I of the federal Clean Air Act and applicable federal regulations promulgated pursuant to Part D of Subchapter I of the federal Clean Air Act, 40 CFR 51.165; and ( )

d. For purposes of determining applicability of any other major or minor permit to construct requirements, issuing, and modifying permits pursuant to 200 through 227, except Section 214, "regulated air pollutant" means those air contaminants that are regulated in attainment and unclassifiable areas pursuant to Part C of Subchapter I of the federal Clean Air Act, 40 CFR 52.21, and any applicable federal regulations promulgated pursuant to Part C of Subchapter I of the federal Clean Air Act, 42 U.S.C. Section 7470 et seq. ( )

40. Replicable. Any SIP procedures for applying emission trading must be structured so that two (2) independent entities would obtain the same result when determining compliance with the emission trading provisions. ( )

41. Responsible Official. One (1) of the following: ( )

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: ( )

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 ( )

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

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

c. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of Section 123, 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). ( )

d. For Phase II sources: ( )

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 ( )

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

42. Secondary Emissions. Emissions that 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 that causes the secondary emissions. Secondary emissions include emissions from any offsite support facility that 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 that come directly from a mobile source regulated under 42 U.S.C. Sections 7521 through 7590. ( )

43. Significant. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following: ( )

a. Criteria Pollutant Significant emission rate.

Criteria Pollutant	Emission Rate (tons/year)
CO	100
NO_x	40
SO_2	40
Ozone as NO_x	40
Ozone as VOC	40
PM	25
PM_{10}	15
$PM_{2.5}$	10
$PM_{2.5}$ as SO_2	40
$PM_{2.5}$ as NO_x	40
Pb	0.6
Any regulated air pollutant not listed in this definition.	Greater than 0

( )

b. Non criteria pollutant significant emission rate.

Non-Criteria Pollutant	Emission Rate (tons/year)
H2S	10
TRS (including H2S)	10
Reduced sulfur compounds (including H2S)	10
H2SO4 mist	7
Fluorides	3

Non-Criteria Pollutant	Emission Rate (tons/year)
Any regulated pollutant not listed in this definition and not a TAP	Greater than zero

( )

c. Other pollutants with a significant emission rate.

Other	Measured as	Emission rate (tons/year)
Municipal waste combustor organics	total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans	3.5×10^{-6}
Municipal waste combustor metals	Particulate matter	15
Municipal waste combustor acid gases	SO_2 and hydrogen chloride	40
Municipal solid waste landfills	Nonmethane organic compounds	50
Any new or modified major source within 10 kilometers of a Class I area	Any regulated air pollutant	Any rate or net increase with a 24-hour impact of ≥ 1 µg/m3

( )

44. Significant Contribution. Any increase in ambient concentrations which would exceed the following:

Pollutant	Annual	Averaging time (hours)			
		24	8	3	1
SO_2	1.0 µg/m ^{3}	5 µg/m ^{3}		25 µg/m ^{3}	
PM_{10}	1.0 µg/m ^{3}	5 µg/m ^{3}			
$PM_{2.5}$	0.3 µg/m ^{3}	1.2 µg/m ^{3}			
NO_2	1.0 µg/m ^{3}				
CO			0.5 mg/m ^{3}		2 mg/m ^{3}

( )

45. Source. A stationary source. ( )

46. Source Operation. The last operation preceding the emission of air pollutants when this operation: ( )

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 ( )

b. Is not an air cleaning device. ( )

47. 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. ( )

48. Stationary Source. Any building, structure, facility, emissions unit, or installation which emits or may emit any air pollutant. The fugitive emissions shall not be considered in determining whether a permit is required

unless required by federal law. ( )

49. **Tier I Source**. Any of the following: ( )

a. Any source located at any major facility as defined in Section 008; ( )

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, and required by EPA to obtain a Part 70 permit; ( )

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, and required by EPA to obtain a Part 70 permit, 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); ( )

d. Any Phase II source; and ( )

e. Any source in a source category designated by the Department. ( )

50. **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. ( )

51. **TRS (Total Reduced Sulfur)**. Hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide and any other organic sulfide present. ( )

52. **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. ( )

53. **Uncontrolled Emission**. An emission which has not been treated by control equipment. ( )

007. DEFINITIONS FOR THE PURPOSES OF SECTIONS 200 THROUGH 228 AND 400 THROUGH 461.

01. **Agricultural Activities and Services**. For the purposes of Subsection 222.02.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. ( )

02. **Baseline Actual Emissions**. The rate of emissions, in tons per year, of a regulated air pollutant as determined by the following provisions: ( )

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the regulated air pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding when the owner or operator begins actual construction of the project. The Department will allow the use of a different time period upon a determination that it is more representative of normal source operation. The average rate must: ( )

i. Include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions. ( )

ii. Be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four (24) month period. ( )

iii. For a regulated air pollutant, when a project involves multiple emissions units, use only one (1) consecutive twenty-four (24) month period to determine the baseline actual emissions for all the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated air pollutant. ( )

iv. Not be based on any consecutive twenty-four (24) month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subsection 007.02.a.ii. ( )

b. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the regulated air pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Department for a permit required under these rules, whichever is earlier, except that the ten (10) year period must not include any period earlier than November 15, 1990. The average rate must: ( )

i. Include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions. ( )

ii. Be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period. ( )

iii. Be adjusted downward to exclude any emission limitation with which the source must currently comply, had such source been required to comply with such limitations during the consecutive twenty-four (24) month period; however, if an emission limitation is part of a standard or other requirement under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the Department has taken credit for such emissions reductions in an attainment demonstration or maintenance plan. ( )

iv. For a regulated air pollutant, when a project involves multiple emissions units, use only one (1) consecutive twenty-four (24) month period to determine the baseline actual emissions for all the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated air pollutant. ( )

v. Not be based on any consecutive twenty-four (24) month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subsections 007.02.b.ii. and 007.02.b.iii. ( )

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit must: equal zero (0) and, thereafter, for all other purposes, equal the unit's potential to emit. ( )

d. For a plant-wide applicability limit (PAL) for a stationary source, the baseline actual emissions must be calculated for existing electric utility steam generating units in accordance with the procedures contained in Subsection 007.02.a, for other existing emissions units in accordance with the procedures contained in Subsection 007.02.b, and for a new emissions unit in accordance with the procedures contained in Subsection 007.02.c. ( )

03. Emissions Increase. The amount by which projected actual emissions exceed baseline actual emissions of an emissions unit. ( )

04. Net Emissions Increase. For purposes of Sections 204 and 205, a net emissions increase is defined by the federal regulations incorporated by reference. For purposes of Section 210, a net emissions increase is an emissions increase from a particular modification plus any other increases and decreases in actual emissions at the facility that are creditable and contemporaneous with the particular modification, where: ( )

a. A creditable increase or decrease in actual emissions is contemporaneous with a particular modification if it occurs between the date five (5) years before the commencement of construction or modification on the particular change and the date that the increase from the particular modification occurs. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred and eighty (180) days; ( )

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. ( )

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: ( )

i. The already operating or permitted source commenced construction or modification prior to July 1, 1995; or ( )

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 ( )

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 IDAPA 58.01.05, "Idaho Rules and Standards for Hazardous Waste," (IDAPA 58.01.05.000 et seq.) or the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 6901-6992k) or a consent order. ( )

05. Projected Actual Emissions. ( )

a. The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated air pollutant in any one (1) of the five (5) years (twelve (12) month period) following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated air pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at an existing major stationary source. ( )

b. In determining the projected actual emissions, the owner or operator of the stationary source: ( )

i. Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with state or federal regulatory authorities, and compliance plans under the approved state implementation plan; and ( )

ii. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and ( )

iii. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or ( )

iv. In lieu of using the method set out in Subsections 007.05.b.i. through 007.05.b.iii., may elect to use the emissions unit's potential to emit, in tons per year. ( )

06. Reasonable Further Progress (RFP). Annual incremental reductions in emissions of the applicable 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. ( )

07. 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. ( )

08. 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. ( )

008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 386.

01. Affected States. All States: ( )

a. Whose air quality may be affected by the emissions of the Tier I source and that are contiguous to Idaho; or ( )

b. That are within fifty (50) miles of the Tier I source. ( )

***02. 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.* ( )

03. 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): ( )

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. ( )

b. Any term or condition of any permits to construct issued by the Department pursuant to Sections 200 through 223 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. ( )

c. Any standard or other requirement under 42 U.S.C. Section 7411 including 40 CFR Part 60; ( )

d. Any standard or other requirement under 42 U.S.C. Section 7412 including 40 CFR Part 61 and 40 CFR Part 63; ( )

e. Any standard or other requirement of the acid rain program under 42 U.S.C. Sections 7651 through 7651o; ( )

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; ( )

g. Any standard or other requirement governing solid waste incineration, under 42 U.S.C. Section 7429; ( )

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 ( )

i. Any standard or other requirement under 42 U.S.C. Sections 7671 through 7671q including 40 CFR Part 82. ( )

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 336. ( )

***04. 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.* ( )

05. Draft Permit. The version of a Tier I operating permit that is made available by the Department for

public participation and affected State review. ( )

0*6*. **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. ( )

0*7*. **General Permit**. A Tier I permit issued pursuant to Section 335. ( )

0*8*. **Major Facility**. A facility (as defined in Section 006) is major if the facility meets any of the following criteria. ( )

a. For hazardous air pollutants, the facility emits or has the potential to emit: ( )

i. 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 must not be aggregated with emissions from other similar emission units within the facility; or ( )

ii. 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 must not be aggregated with emissions from other similar emission units within the facility. ( )

b. For non-attainment areas, the facility is located in: ( )

i. A "serious" particulate matter (PM10 or PM2.5) nonattainment area and the facility has the potential to emit seventy (70) tpy or more of PM10 or PM2.5; ( )

ii. 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; ( )

iii. 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; or ( )

iv. 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 are not 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. ( )

c. The facility emits or has the potential to emit one hundred (100) tons per year or more of any regulated air pollutant. The fugitive emissions are not considered in determining whether the facility is major unless the facility belongs to one (1) of the following categories: ( )

i. Designated facilities. ( )

ii. All other source categories regulated by 40 CFR Part 60, 61 or 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. ( )

009. DEFINITIONS FOR THE PURPOSES OF 40 CFR PARTS 60, 61, AND 63.
Notwithstanding the definitions listed in Sections 006 through 008, the definitions in 40 CFR Parts 60, 61, and 63 will have the meaning given in those Parts, except that the term "Administrator" means "Department." ( )

0*10*. -- 106. (RESERVED)

107. INCORPORATIONS BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 constitutes 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. ( )

02. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: ( )

a. All federal publications: U.S. Government Printing Office at http://www.ecfr.gov/cgi-bin/ECFR; and; ( )

b. Statutes of the state of Idaho: http://legislature.idaho.gov/idstat/TOC/IDStatutesTOC.htm; and ( )

c. All documents herein incorporated by reference: ( )

i. Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at www.deq.idaho.gov. ( )

ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051 at www.isll.idaho.gov. ( )

03. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: ( )

a. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR Part 51 revised as of July 1, 2022. All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, are excluded from incorporation except 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules. ( )

b. National Primary and Secondary Ambient Air Quality Standards, 40 CFR Part 50, revised as of July 1, 2022. ( )

c. Approval and Promulgation of Implementation Plans, 40 CFR Part 52, Subparts A and N and Appendices D and E, revised as of July 1, 2022. ( )

d. Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR Part 53, revised as of July 1, 2022. ( )

e. Ambient Air Quality Surveillance, 40 CFR Part 58, revised as of July 1, 2022. ( )

f. Standards of Performance for New Stationary Sources, 40 CFR Part 60, revised as of July 1, 2022. ( )

g. National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, revised as of July 1, 2022. ( )

h. Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or Before December 1, 2008, 40 CFR Part 62, Subpart HHH, revised as of July 1, 2022. ( )

i. Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction On or Before July 17, 2014 and Have Not Been Modified or Reconstructed Since July 17, 2014, 40 CFR Part 62, Subpart OOO, revised as of July 1, 2022. ( )

j. National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63, revised as of July 1, 2022. ( )

k. Compliance Assurance Monitoring, 40 CFR Part 64, revised as of July 1, 2022. ( )

l. State Operating Permit Programs, 40 CFR Part 70, revised as of July 1, 2022. ( )

m. Permits, 40 CFR Part 72, revised as of July 1, 2022. ( )

n. Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 2022. ( )

o. Protection of Stratospheric Ozone, 40 CFR Part 82, revised as of July 1, 2022. ( )

p. Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). ( )

108. OBLIGATION TO COMPLY.
Receiving a permit to construct, a Tier I operating permit, a Tier II operating permit, a Permit by Rule, or a Certificate of Registration for portable equipment does not relieve any owner or operator of the responsibility to comply with all applicable local, state and federal statutes, rules and regulations. ( )

109. -- 120. (RESERVED)

121. COMPLIANCE REQUIREMENTS BY DEPARTMENT.
Any person engaged in an activity that may violate the air quality provisions of the Act, violate an air quality order issued or entered in accordance with the Act or these rules, or violate any of these rules, may be required by the Department to do any of the following: ( )

01. Schedule. Prepare a proposed schedule whereby the unlawful activity will be brought into compliance over a specified period of time. ( )

02. Report. Submit periodic reports to the Department indicating progress in achieving compliance. ( )

03. Records. Submit, keep and maintain appropriate records. ( )

04. Monitoring. Monitor air pollutants at the source, in the ambient air, or in vegetation to demonstrate compliance. ( )

05. Episode Plans. Develop emergency episode plans to help prevent ambient air pollution concentrations from reaching levels which would cause substantial endangerment to health or the environment. ( )

122. INFORMATION ORDERS BY THE DEPARTMENT.
The Department may issue information orders as follows: ( )

01. Purpose. For the purpose of: ( )

a. Developing or assisting in the development of any implementation plan, any standard of performance, any emission standard or any rule; ( )

b. Determining whether any person is in violation of any standard of performance, any emission standard, any implementation plan or any rule; or ( )

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. ( )

02. Persons. The Department may issue an information order to any person who: ( )

a. Owns or operates any emission source; ( )

b. Manufactures emission control equipment; ( )

c. The Department believes may have information necessary to meet the intent of these rules; or ( )

d. Is subject to any requirement of these rules. ( )

03. Procedures. The information order may require the following on a one-time, periodic or continuous basis: ( )

a. Establish, maintain and submit records; ( )

b. Make reports; ( )

c. Install, use, and maintain monitoring equipment, and use audit procedures or methods; ( )

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 prescribes; ( )

e. Keep records on control equipment parameters, production variables or other indirect data when the Department determines that direct monitoring of emissions is impractical; ( )

f. Submit compliance certifications including: ( )

i. Identification of the applicable requirement that is the basis of the certification; ( )

ii. The method(s) or other means used by the owner or operator for determining the compliance status for each applicable requirement, and whether such methods or other means provide continuous or intermittent data; and ( )

iii. The status of compliance with each applicable requirement, based on the method or means designated in Subsection 122.03.f.ii. The certification must identify each deviation and take it into account in the compliance certification. The certification must 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 ( )

g. Provide such other information as the Department may require. ( )

123. CERTIFICATION OF DOCUMENTS.
All documents, including but not limited to, application forms for permits to construct, application forms for operating permits, progress reports, records, monitoring data, supporting information, requests for confidential treatment, testing reports or compliance certifications submitted to the Department must contain a certification by a responsible official. The certification must state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. ( )

124. (RESERVED)

125. FALSE STATEMENTS.
Persons are prohibited from knowingly making any false statement, representation, or certification in any form, notice, or report required under any permit, or any applicable rule or order in force pursuant thereto. ( )

126. TAMPERING.
Persons are prohibited from knowingly interfering with any monitoring device or method required under any permit, or any applicable rule or order in force pursuant thereto. ( )

127. (RESERVED)

128. CONFIDENTIAL INFORMATION.
Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, Idaho Code and Section 39-111, Idaho Code. Information submitted under a trade secret claim may be entitled to confidential treatment by the Department as provided in Section 74-114, Idaho Code, and IDAPA 58.01.23, "Contested Case Rules and Rules for Protection and Disclosure of Records." If the information for which the person is requesting confidential treatment is submitted to the Department under Sections 300 through 386 or the terms or conditions of a Tier I operating permit, the person must also submit the same information directly to the EPA. ( )

129. (RESERVED)

130. STARTUP, SHUTDOWN, SCHEDULED MAINTENANCE, SAFETY MEASURES, UPSET AND BREAKDOWN.
Sections 130 through 136 establish procedures to be implemented in all excess emissions events and 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, upset, or breakdown of any emissions unit or that occur as a direct result of the implementation of any safety measure. Startup is defined as 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. Shutdown is defined as 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. Upset is defined as an unplanned disruption in the normal operations of any equipment or emissions unit that may cause excess emissions. Breakdown is defined as an unplanned failure of any equipment or emissions unit that may cause excess emissions. Scheduled maintenance is defined as 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. Safety measure is defined as any shutdown (and related startup) or bypass of equipment or processes undertaken to prevent imminent injury or death or severe damage to equipment or property which may cause excess emissions. ( )

131. EXCESS EMISSIONS.

01. Applicability. The owner or operator of a facility or emissions unit generating excess emissions must comply with Sections 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 must also comply with the applicable provisions of Subsections 133.02, 133.03, 134.04, and 134.05. ( )

02. Enforcement Action Criteria. Where an excess emissions event occurs as a direct result of startup, shutdown, or scheduled maintenance, or an unavoidable upset or unavoidable breakdown, or the implementation of a safety measure, the Department will consider the sufficiency of the information submitted and the following criteria to determine if an enforcement action to impose penalties is warranted: ( )

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; ( )

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;

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 ( )

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. ( )

03. Effect of Determination. Any decision by the Department under Subsection 131.02 will not

excuse the owner or operator from compliance with the relevant emission standard and will 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 does not preclude the Department from taking an enforcement action for future or other excess emission events. The affirmative defense for emergencies under Section 332 may be applied in addition to the provisions of Sections 130 through 136. ( )

132. CORRECTION OF CONDITION.
The person responsible for, or in charge of a facility during, an excess emissions event must, 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 the emission standard is exceeded; and must, 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. ( )

133. STARTUP, SHUTDOWN AND SCHEDULED MAINTENANCE REQUIREMENTS.
The requirements in Subsection 133.01 apply in all cases where startup, shutdown, or scheduled maintenance of any equipment or emissions unit is expected to result or results in an excess emissions event. The owner or operator of the facility or emissions unit generating the excess emissions must demonstrate compliance with all of the requirements of Subsection 133.01, as well as the development and implementation of procedures pursuant to Subsections 133.02 and 133.03 as a prerequisite to any consideration under Subsection 131.02. ( )

01. General Provisions. The following pertains to all startup, shutdown, and scheduled maintenance activities expected to result or resulting in excess emissions. The owner or operator of a source of excess emissions must: ( )

a. Ensure that no scheduled startup, shutdown, or maintenance resulting in excess emissions occurs during any period in which an Air Quality Advisory has been declared by the Department within an area designated by the Department as a PM10 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. ( )

b. Notify the Department of any startup, shutdown, or scheduled maintenance event that is expected to cause an excess emissions event. Such notification must 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 must 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; ( )

c. Report and record the information required pursuant to Sections 135 and 136 for each excess emissions event due to startup, shutdown, or scheduled maintenance and ( )

d. Make the maximum reasonable effort, including off-shift labor where practicable to accomplish maintenance during periods of nonoperation of any related source operations or equipment. ( )

02. Excess Emissions Procedures. For all equipment or emissions unit from which excess emissions may occur during startup, shutdown, or scheduled maintenance, the facility owner or operator must prepare, implement and file with the Department specific procedures that 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) must be established or documented for each piece of equipment or emissions unit and must 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). ( )

a. Identification of the specific equipment or emissions unit and the type of event anticipated. ( )

b. Identification of the specific emissions in excess of applicable emission standards during the startup, shutdown, or scheduled maintenance period. ( )

c. The estimated amount of excess emissions expected to be released during each event. ( )

d. The expected duration of each excess emissions event. ( )

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). ( )

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. ( )

g. For scheduled maintenance, the owner or operator must also document detailed explanations of: ( )

i. Why the maintenance is needed; ( )

ii. Why it is impractical to reduce or cease operation of the equipment or emissions unit during the scheduled maintenance period; ( )

iii. Why the excess emissions are not reasonably avoidable through better scheduling of the maintenance or through better operation and maintenance practices; and ( )

iv. Why, where applicable, it is necessary to by-pass, take offline, or operate equipment or emissions unit at reduced efficiency while the maintenance is being performed. ( )

h. Justification to explain why the piece of equipment or emissions unit cannot be modified or redesigned to eliminate or reduce the excess emissions that occur during startup, shutdown, and scheduled maintenance. ( )

i. Detailed specification of the procedures to be followed by the owner or operator that 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 equipment or emissions unit to reduce the excess emissions. ( )

03. Amendments. The owner or operator must 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. ( )

04. Filing Procedures. ( )

a. Unless otherwise required by the Department, the failure to prepare or file procedures pursuant to Subsection 133.02 is not a violation of these rules. ( )

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, fulfills the requirement under this Section to file plans and procedures with the Department. ( )

134. UPSET, BREAKDOWN AND SAFETY REQUIREMENTS.
The requirements in Subsections 134.01, 134.02, and 134.03 apply in all cases where upset or breakdown of equipment or an emissions unit, or the initiation of safety measures, result or may result in an excess emissions event. The owner or operator of the facility or emissions unit generating the excess emissions must demonstrate compliance with all of the 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 as a prerequisite to any 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 will exercise its enforcement discretion on a case-by-case basis. ( )

01. Routine Maintenance and Repairs. For all equipment or emissions units from which excess emissions may occur during upset conditions or breakdowns or implementation of safety measures, the facility owner or operator must: ( )

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 ( )

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 must be utilized, to the extent practicable, to ensure that such repairs are made expeditiously. ( )

02. Excess Emissions Minimization and Notification. For all equipment or emissions units from which excess emissions 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 must: ( )

a. 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; ( )

b. Notify the Department of any upset/breakdown/safety event that results in excess emissions. Such notification must identify the time, specific location, equipment or emissions unit involved, and (to the extent known) the cause(s) of the occurrence. The notification must 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; and ( )

c. 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. ( )

03. Discretionary Reduction or Cessation Provisions. During any period of excess emissions caused by upset, breakdown, or operation under facility safety measures, the Department may require the owner or operator to immediately reduce or cease operation of the equipment or emissions unit 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 be taken upon consideration of the following factors and after consultation with the facility owner or operator: ( )

a. Potential risk to the public or the environment. ( )

b. Whether ceasing operations could result in physical damage to the equipment, emissions unit or facility, or cause injury to employees. ( )

c. Whether continued excess emissions were reasonably unavoidable as determined by the Department. ( )

d. The effect of the increase in pollution resulting from the shutdown and subsequent restart of the equipment or emissions unit or facility. ( )

e. The owner or operator is not required to reduce or cease operations at the entire facility if reducing or ceasing operations at a portion of the facility eliminates or adequately reduces the excess emissions. ( )

04. Procedures. For equipment or emissions units and process upsets and breakdowns and situations that require implementation of safety measures, events that can reasonably be anticipated to occur periodically but that cannot be reasonably avoided or predicted with certainty, the owner or operator must prepare, implement, and

file with the Department specific procedures that 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: ( )

a. The specific air pollution control equipment or emissions unit and the type of event anticipated. ( )

b. The specific emissions in excess of applicable emission standards during the event. ( )

c. The estimated amount of excess emissions expected to be released during each event. ( )

d. The expected duration of each excess emissions event. ( )

e. An explanation of why the excess emissions are reasonably unavoidable. ( )

f. The frequency of the type of event, based on historic occurrences. ( )

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. ( )

h. Detailed specification of the procedures to be followed by the owner or operator that will minimize excess emissions at all times during such events, including without limitation those procedures listed under Subsection 134.05. ( )

05. Amendments to Procedures. The owner or operator must 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. ( )

06. Filing Procedures. ( )

a. Failure to follow procedures filed with the Department does 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. ( )

b. Unless otherwise required by the Department, the failure to prepare or file procedures pursuant to Subsection 134.04 is not a violation of these rules in and of itself. ( )

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, fulfills the requirement under this Section to file plans and procedures with the Department. ( )

135. EXCESS EMISSIONS REPORTS.

01. Submission Deadline. A written report for each excess emissions event must be submitted to the Department by the owner or operator no later than fifteen (15) days after the beginning of each such event. ( )

02. Report Contents. Each report must contain the following information: ( )

a. The time period during which the excess emissions occurred; ( )

b. Identification of the specific equipment or emissions unit that caused the excess emissions; ( )

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; ( )

d. An estimate of the emissions in excess of any applicable emission standard (based on knowledge of the process and facility where emissions data is unavailable); ( )

e. A description of the activities carried out to eliminate the excess emissions; and ( )

f. Certify compliance status with the requirements of Sections 131, 132, 133.01, 134.01 through 134.03, 135, and 136. ( )

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. ( )

136. EXCESS EMISSIONS RECORDS.

01. Record Retention. The owner or operator must maintain excess emissions records at the facility for the most recent five (5) calendar year period. ( )

02. Record Availability. The excess emissions records must be made available to the Department upon request. ( )

03. Record Contents. The excess emissions records must include the following: ( )

a. An excess emissions logbook 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 ( )

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. ( )

137. -- 154. (RESERVED)

155. CIRCUMVENTION.
No person may willfully cause or permit the installation or use of any device or use of any means that conceals emissions of pollutants that would otherwise violate the provisions of this chapter without resulting in a reduction in the total amount of emissions. ( )

156. TOTAL COMPLIANCE.
Where more than one (1) section of these rules applies to a particular situation, all such rules must be met for total compliance, unless otherwise provided for in these rules. ( )

157. TEST METHODS AND PROCEDURES.
This section establishes 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: ( )

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 must be conducted in accordance with the requirements of this section. ( )

a. Prior to conducting any emission test, owners or operators are encouraged to submit to the Department in writing, at least thirty (30) days in advance, the following for approval: ( )

i. The type of method to be used; ( )

ii. Any extenuating or unusual circumstances regarding the proposed test; and ( )

iii. The proposed schedule for conducting and reporting the test. ( )

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. ( )

02. Test Requirements. Tests must be conducted in accordance with the following requirements. ( )

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 must 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 that are changeable or that could reasonably be expected to be encountered during the operation of the facility and that would result in the highest pollutant emissions from the facility. ( )

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. ( )

c. The Department will accept the methods approved for the applicable pollutants, source type and operating conditions found in 40 CFR Parts 51, 60, 61, and 63 in determining the appropriate test method for an emission limit where one is not otherwise specified. ( )

d. The following requirements apply to owners or operators requesting minor changes in the test method. ( )

i. For federal emission standards codified at 40 CFR Parts 60, 61, and 63, the Department will accept those minor changes that have received written approval of the U.S. EPA Administrator if the Department determines they are appropriate for the specific application. ( )

ii. For all other emission standards in these rules or for permit requirements, the Department will accept those minor changes that the Department determines are appropriate for the specific application. ( )

e. An owner or operator proposing to use an alternative test method not considered a minor change in Subsection 157.02.d. above, must: ( )

i. Demonstrate to the Department by comparative testing or sufficient analysis, that the alternative method is comparable and equivalent to the designated test method. ( )

ii. Submit the request for approval to use an alternative test method to the Department at least thirty (30) days in advance of a scheduled test. ( )

iii. Obtain, and submit to the Department, EPA approval for use of the alternative test method for emission standards in these rules (except for state only toxic air pollutant standards) or for federal emission standards codified at 40 CFR Parts 60, 61, and 63. ( )

iv. Obtain verification that any prior approval of an alternative test method by the Department continues to be acceptable. Alternative methods may cease to be acceptable 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. ( )

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. ( )

03. Observation of Tests by Department Staff. The owner or operator must 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. ( )

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 must: ( )

a. Be submitted to the Department within sixty (60) days of the completion of field sample collection; ( )

b. 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; and ( )

c. Include all data required to be noted or recorded in any referenced test method. ( )

05. Test Results Review Criteria. The Department will make every effort to review test results within a reasonable time. The Department may reject tests as invalid for: ( )

a. Failure to adhere to the approved/required method; ( )

b. Using a method inappropriate for the source type or operating conditions; ( )

c. An incomplete written report; ( )

d. Computational or data entry errors; ( )

e. Clearly unreasonable results; ( )

f. Failure to comply with the certification requirements of Section 123; or ( )

g. Failure of the source to conform to operational requirements in orders, permits, or consent decrees at the time of the test. ( )

158. -- 160. (RESERVED)

161. TOXIC AIR POLLUTANTS.
Any contaminant that is by its nature toxic to human or animal life or vegetation must not be emitted in such quantities or concentrations as to alone, or in combination with other contaminants, injure or unreasonably affect human or animal life or vegetation. ( )

162. –163. (RESERVED)

164. POLYCHLORINATED BIPHENYLS (PCBS).

01. Prohibition on Burning. Burning any material containing greater than five (5) parts per million of polychlorinated biphenyls (PCBs) is prohibited, except for incineration for the purpose of disposal. Incineration for disposal must comply with the following provisions: ( )

a. No person may commence construction or modification of a PCB incinerator without a permit issued according to Sections 200 through 225. ( )

b. The Department will provide opportunity for public comments prior to a final decision for a permit to construct or modify a new PCB incinerator. ( )

c. A permit issued according to Sections 200 through 225 for construction or modification of a PCB incinerator will require, as a minimum, best available control technology and monitoring instrumentation. ( )

02. Prohibition on Sales. No person may sell, distribute or provide any materials containing greater than five (5) parts per million PCBs for home or commercial heating equipment. ( )

165. -- 174. (RESERVED)

175. PROCEDURES AND REQUIREMENTS FOR PERMITS ESTABLISHING A FACILITY EMISSIONS CAP.
Sections 176 through 181 establish uniform procedures to obtain a Facility Emissions Cap (FEC) for stationary sources or facilities (hereinafter referred to as facility or facilities). A permit establishing a FEC will be issued pursuant to Sections 200 through 227 or Sections 400 through 409. ( )

176. FACILITY EMISSIONS CAP.

01. Optional Facility Emissions Cap. An owner or operator of a facility may request a FEC to establish an enforceable facility-wide emission limitation. ( )

02. Applicability. ( )

a. The owner or operator of any facility, which is not a major facility as defined in Sections 204 or 205, may apply to the Department for a permit to establish a FEC. ( )

b. FECs are available for new and existing facilities that are not major as defined in Section 204 or 205 or existing facilities undergoing a modification that does not make the facility a major facility as defined in Section 204 or 205. ( )

c. Facilities that become major facilities as defined in Section 204 or 205 are no longer eligible for a FEC under Section 176. ( )

03. Definitions. For the purposes of Sections 175 through 181, the following terms are defined as below. ( )

a. Baseline actual emissions. As defined in Section 007. ( )

b. Design concentration. The ambient concentration used in establishing the FEC. ( )

c. Facility emissions cap (FEC). A facility-wide emission limitation expressed in tons per year, for any criteria pollutant or hazardous air pollutant established in accordance with Sections 176 through 181. A FEC is calculated using baseline actual emissions plus an operational variability component and a growth component. A FEC, which is defined in tons per year on a twelve (12) month rolling basis, must be set below major facility thresholds as defined in Sections 204 and 205. ( )

d. FEC pollutant. The pollutant for which a FEC is established. ( )

e. Growth component. The level of emissions requested by the applicant and approved by the Department to allow for potential future business growth or facility changes that may increase emissions above baseline actual emissions plus the operational variability component. ( )

f. Operational variability component. The level of emissions up to the significant emission rate (SER) minus one (1) ton per year but no more than the facility’s potential to emit (PTE). If the proposed FEC pollutant does not have a SER listed in Section 006 or has a SER less than or equal to ten (10) tons per year, the operational variability component is the level of emissions requested by the applicant and approved by the Department. The operational variability component cannot be more than the facility's PTE. ( )

177. APPLICATION PROCEDURES.
In addition to the information required pursuant to Sections 202 or 402, whichever is applicable, applications requesting a FEC must include the information required under Sections 176 through 181 and Subsections 177.01

through 177.03. ( )

01. Estimates of Emissions. A proposed FEC for each pollutant requested by the facility, including the basis for calculating the FEC. ( )

02. Estimates of Ambient Concentrations. ( )

a. Estimates of ambient concentrations will be determined as described in Subsection 202.02. ( )

b. Estimates of ambient concentrations may include projections of alternative future changes within the proposed FEC. ( )

c. For a new, existing, or modified facility, a demonstration that for each FEC pollutant, the FEC will not cause or significantly contribute to a violation of any ambient air quality standard. ( )

d. For renewal of terms and conditions establishing a FEC, it is presumed that the previous permitting analysis is satisfactory, unless the Department determines otherwise. ( )

03. Monitoring and Recordkeeping. The application must include proposed means for the facility to determine facility emissions on a rolling twelve (12) month consecutive basis. ( )

178. STANDARD CONTENTS OF PERMITS ESTABLISHING A FACILITY EMISSIONS CAP.
In addition to the elements required by Sections 203 and 211 or Sections 403 and 405, whichever is applicable, the Department has the authority to impose, implement and enforce the terms in Subsections 178.01 through 178.05 and conditions establishing a FEC. ( )

01. Emission Limitations and Standards. All permits establishing use of a FEC will contain annual facility wide emissions limitations for each FEC pollutant. ( )

02. Monitoring. All permits establishing a FEC will contain sufficient monitoring to ensure compliance with the FEC on a rolling twelve (12) month consecutive basis. ( )

03. Recordkeeping. All permits establishing a FEC will include the following: ( )

a. Sufficient recordkeeping to assure compliance with the FEC. ( )

b. Retention of required 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, calibration and maintenance records and original strip-chart recordings for continuous monitoring instrumentation and copies of all reports required by the permit. ( )

04. Reporting. All permits establishing a FEC will include the following: ( )

a. Sufficient reporting to assure compliance with the permit establishing the FEC. ( )

b. Submittal of an annual report each year on or before the anniversary date of permit issuance. All required reports must be certified in accordance with Section 123. ( )

05. Duration. Each permit establishing a FEC will state that the terms and conditions establishing the FEC are effective for a fixed term of five (5) years. ( )

179. PROCEDURES FOR ISSUING PERMITS ESTABLISHING A FACILITY EMISSIONS CAP.

01. General Procedures. Procedures for issuing permits establishing a FEC will follow Sections 209 or 404, whichever is applicable. ( )

02. Renewal. The renewal of the terms and conditions establishing a FEC are subject to the same

procedural requirements for issuing permits (Subsection 179.01) and Subsections 179.02.a. through 179.02.d.: ( )

a. The permittee must submit a complete application to the Department for a renewal of the terms and conditions establishing the FEC at least six (6) months before, but no earlier than eighteen (18) months before, the expiration date of the existing permit. To ensure that the term of the permit does not expire before the terms and conditions are renewed, the permittee is encouraged to submit the application nine (9) months prior to expiration. ( )

b. If a timely and complete application for a renewal of the terms and conditions establishing the FEC 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 remain in effect until the renewal permit has been issued or denied. ( )

c. Expiration of the terms and conditions establishing a FEC may be grounds to terminate the facility's right to operate pursuant to Sections 176 through 181, unless a timely and complete renewal application has been submitted. ( )

d. On renewal, the Department may adjust a FEC with an unused growth component in accordance with the Idaho Environmental Protection and Health Act, Chapter 1, Title 39, Idaho Code, and these rules. ( )

03. Reopening the FEC. The Department may reopen a FEC to: ( )

a. Reduce the FEC to reflect newly applicable federal requirements' compliance dates after the issuance of the permit establishing the FEC. ( )

b. Reduce the FEC consistent with any other requirement that is enforceable as a practical matter, and that the state may impose on the facility under the Idaho Environmental Protection and Health Act, Chapter 1, Title 39, Idaho Code, and these rules. ( )

04. FEC Termination. The Department may approve a revision of a permit establishing a FEC to terminate the FEC, provided the permittee complies with Subsections 209.04 or 404.04, as applicable, and Subsections 179.04.a. through 179.04.c.: ( )

a. The permittee may request a revision of the permit establishing the FEC to terminate the FEC at any time prior to the expiration of the permit. The permittee is encouraged to submit an application for a permit to construct or Tier I operating permit, as applicable, six (6) months prior to the time the permittee wishes to terminate the FEC. ( )

b. The FEC established in the permit remains in effect until the Department issues a new permit to construct or Tier I operating permit, as applicable. ( )

c. Nothing in Section 179 prohibits a permittee from requesting a permit revision to terminate the FEC during the permit renewal process. ( )

180. REVISIONS TO PERMITS ESTABLISHING A FACILITY EMISSIONS CAP.
Section 180 requires revisions to terms and conditions establishing a FEC. The permittee is exempt from Sections 200 through 227 unless the permittee chooses to use those rules to process any change to the permit, except as provided in Subsection 180.02. ( )

01. Criteria. A permit revision is required for the following: ( )

a. A change to existing monitoring, reporting or recordkeeping requirements in the permit establishing the FEC; ( )

b. A change to the FEC; or ( )

c. A change to the facility that would impose new requirements not included in the permit establishing the FEC. ( )

02. Permit Revision Application Procedures. A permittee may initiate a permit revision by submitting a permit revision application to the Department or by complying with other applicable sections (Sections 200 or 400). For revision of terms and conditions establishing the FEC, it is presumed that the previous permitting analysis is satisfactory unless the Department determines otherwise. A permit revision application must: ( )

a. Meet the standard application requirements of Section 177; ( )

b. Describe the proposed permit revision; ( )

c. Describe and quantify the change in emissions above the FEC permit limit; and ( )

d. Identify new requirements resulting from the change. ( )

03. Permit Revisions. The Department will process permit revisions pursuant to Section 209 or Section 404. ( )

181. NOTICE AND RECORD-KEEPING OF ESTIMATES OF AMBIENT CONCENTRATIONS.
Section 181 authorizes facility changes that comply with the terms and conditions establishing the FEC, but that are not included in the estimate of ambient concentration analysis approved for the permit establishing the FEC. No permit revision is required for facility changes implemented in accordance with Section 181. ( )

01. Notice. For facility changes that comply with the terms and conditions establishing the FEC but are not included in the estimate of ambient concentration analysis approved for the permit establishing the FEC, the permittee must review the estimate of ambient concentration analysis. ( )

a. In the event that the facility change would result in a significant contribution above the design concentration determined by the estimate of ambient concentration analysis approved for the permit establishing the FEC but does not cause or significantly contribute to a violation to any ambient air quality standard, the permittee must provide notice to the Department in accordance with Subsection 181.01.b. ( )

b. Notice procedures. The permittee may make a facility change under Section 181 if the permittee provides written notification to the Department 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. For each such change, the written notification must: ( )

i. Describe the proposed change; ( )

ii. Describe and quantify expected emissions; and ( )

iii. Provide the estimated ambient concentration analysis. ( )

02. Recordkeeping. For facility changes that comply with the terms and conditions establishing the FEC but are not included in the estimate of ambient concentration analysis approved for the permit establishing the FEC, the permittee must review the estimate of ambient concentration analysis. In the event the facility change would not result in a significant contribution above the design concentration determined by the estimate of ambient concentration analysis approved for the permit establishing the FEC, the permittee must record and maintain documentation on-site of the review. ( )

03. Estimates of Ambient Concentrations. Estimates of ambient concentrations must be determined during the term of this permit using the same model and model parameters as used with the estimate of ambient concentration analysis approved for the permit establishing the FEC. The permittee must include any changes to the facility that are not included in the originally approved estimate of ambient concentration analysis. ( )

182. -- 199. (RESERVED)

200. PROCEDURES AND REQUIREMENTS FOR PERMITS TO CONSTRUCT.
Sections 200 through 227 establish uniform procedures and requirements for the issuance of "Permits to Construct." As used throughout Sections 200 through 227 and 578 through 581, major facility is defined as major stationary source in 40 CFR 52.21(b) and 40 CFR 51.165, incorporated by reference in Section 107, and major modification is defined as in 40 CFR 52.21(b) and 40 CFR 51.165, incorporated by reference in Section 107. These CFR sections have been codified in the electronic CFR which is available at https://www.ecfr.gov/current/title-40. ( )

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 that satisfies the requirements of Sections 200 through 227 unless the source is exempted in any of Sections 220 through 223, or the owner or operator complies with Section 213 and obtains the required permit to construct, or the owner or operator complies with Sections 175 through 181, or the source operates in accordance with all of the applicable provisions of a permit by rule. ( )

202. APPLICATION PROCEDURES.
Application for a permit to construct must be made using forms furnished by the Department, or by other means approved by the Department. The application must be certified by the responsible official in accordance with Section 123 and be accompanied by all information necessary to perform any analysis or make any determination required under Sections 200 through 227. ( )

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 must include all the information required by one or more of the following provisions: ( )

a. For any new or modified stationary source or facility: ( )

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. ( )

ii. A schedule for construction of the stationary source, facility, or modification. ( )

b. For any new major facility or major modification in a nonattainment area that would be major for the nonattainment regulated air pollutant(s): ( )

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. ( )

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. ( )

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. ( )

iv. An analysis of alternative sites, sizes, production processes, and environmental control techniques that 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. ( )

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). ( )

c. For any new major facility or major modification in an attainment or unclassifiable area for any regulated air pollutant. ( )

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. ( )

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. ( )

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. ( )

iv. A description of the nature, extent, and air quality effects of any or all general commercial, residential, industrial, and other growth that has occurred since August 7, 1977, in the area the new major facility or major modification would affect. ( )

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. ( )

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. ( )

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. ( )

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 amounts listed under 40 CFR 52.21(i)(5)(i), or the regulated air pollutant is not listed therein. ( )

ix. For any regulated air pollutant that has an ambient air quality standard, the analysis must 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. ( )

x. For any regulated air pollutant that does not have an ambient air quality standard, the analysis must 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. ( )

xi. If requested by the Department, monitoring of visibility in any Class I area the proposed new major facility or major modification would affect. ( )

xii. Operation of monitoring stations must 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. ( )

02. Estimates of Ambient Concentrations. All estimates of ambient concentrations must be based on

the applicable air quality models, data bases, and other requirements specified in 40 CFR 51, Appendix W (Guideline on Air Quality Models).Where an air quality model specified in the "Guideline on Air Quality Models," is inappropriate, the model may be modified or another model substituted, subject to written approval of the EPA Administrator 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. ( )

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 ( )

203. PERMIT REQUIREMENTS FOR NEW AND MODIFIED STATIONARY SOURCES.
No permit to construct will be granted for a new or modified stationary source unless the applicant shows to the satisfaction of the Department all of the following: ( )

01. Emission Standards. The stationary source or modification would comply with all applicable local, state or federal emission standards. ( )

02. NAAQS. The stationary source or modification would not cause or significantly contribute to a violation of any ambient air quality standard. ( )

03. Toxic Air Pollutants. Using the methods provided in Section 210, the emissions of toxic air pollutants from the stationary source or modification would not injure or unreasonably affect human or animal life or vegetation as required by Section 161. Compliance with all applicable toxic air pollutant carcinogenic increments and toxic air pollutant non-carcinogenic increments demonstrates preconstruction compliance with Section 161 with regards to the pollutants listed in Sections 585 and 586. ( )

204. PERMIT REQUIREMENTS FOR NEW MAJOR FACILITIES OR MAJOR MODIFICATIONS IN NONATTAINMENT AREAS.
New major facilities or major modifications proposed for location in a nonattainment area and which would be major for the nonattainment regulated air pollutant are considered nonattainment new source review (NSR) actions and are subject to the requirements in Section 204. Section 202 contains application requirements and Section 209 contains processing requirements for nonattainment NSR permitting actions. The intent of Section 204 is to incorporate the federal nonattainment NSR rule requirements. ( )

01. Incorporated Federal Program Requirements. Requirements contained in the following subparts of 40 CFR 51.165 are incorporated by reference in Section 107. Requirements contained in the following subparts of 40 CFR 52.21, are incorporated by reference in Section 107. These CFR sections have been codified in the electronic CFR at https://www.ecfr.gov/current/title-40.

40 CFR Reference	40 CFR Reference Title
40 CFR 51.165(a)(1)	Definitions
40 CFR 51.165(a)(2)(ii) - 51.165(a)(3)	Applicability Provisions
40 CFR 51.165(a)(6)(i) - (v)	Applicability Provisions
40 CFR 52.21(aa)	Actual PALs

( )

02. Additional Requirements. The applicant must demonstrate to the satisfaction of the Department the following: ( )

a. LAER. Except as otherwise provided in Section 204, the new major facility or major modification would be operated at the lowest achievable emission rate (LAER) for the nonattainment regulated air pollutant, specifically: ( )

i. A new major facility would meet the lowest achievable emission rate at each new emissions unit that emits the nonattainment regulated air pollutant; and ( )

ii. A major modification would meet the lowest achievable emission rate at each new or modified emissions unit that has a net emissions increase of the nonattainment regulated air pollutant. ( )

b. Required offsets. Allowable emissions from the new major facility or major modification are offset by reductions in actual emissions from stationary sources, 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 that satisfies the requirements of Section 208. If the offsets are provided by other stationary sources or facilities, a permit to construct will 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 will not be effective before the date the offsetting reductions are achieved. ( )

c. 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. ( )

d. 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 Class I Federal Area, by the new major facility or major modification, is consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR 51.300(a). The Department may take into account the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance and the useful life of the source. 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 51.304(a), may be exempted from Section 204 by the Department. ( )

03. Nonmajor Requirements. If the proposed action meets the requirements of an exemption or exclusion under the provisions of 40 CFR 51.165 or 40 CFR 52.21 incorporated in Section 204, the nonmajor facility or stationary source permitting requirements of Sections 200 through 227 apply, including the exemptions in Sections 220 through 223. ( )

205. PERMIT REQUIREMENTS FOR NEW MAJOR FACILITIES OR MAJOR MODIFICATIONS IN ATTAINMENT OR UNCLASSIFIABLE AREAS.

The prevention of significant deterioration (PSD) program is a construction permitting program for new major facilities and major modifications to existing major facilities located in areas in attainment or in areas that are unclassifiable for any criteria air pollutant. Section 202 contains application requirements and Section 209 contains processing requirements for PSD permit actions. The intent of Section 205 is to incorporate the federal PSD rule requirements. ( )

01. Incorporated Federal Program Requirements. Requirements contained in the following subparts of 40 CFR 52.21 are incorporated by reference in Section 107. These CFR sections have been codified in the electronic CFR which is available at https://www.ecfr.gov/current/title-40.

40 CFR Reference	40 CFR Reference Title
40 CFR 52.21(a)(2)	Applicability Procedures
40 CFR 52.21(b)	Definitions
40 CFR 52.21(i)	Review of Major Stationary Sources and Major Modifications - Source Applicability and Exempting
40 CFR 52.21(j)	Control Technology Review
40 CFR 52.21(k)	Source Impact Analysis

40 CFR Reference	40 CFR Reference Title
40 CFR 52.21(r)	Source Obligation
40 CFR 52.21(v)	Innovative Control Technology
40 CFR 52.21(w)	Permit Rescission
40 CFR 52.21(aa)	Actual PALS

( )

02. Effect on Visibility. The applicant must demonstrate that the effect on visibility of any federal Class I area, Class I area designated by the Department, or integral vista of a mandatory Class I Federal Area, by the new major facility or major modification, is consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR 51.300(a). The Department may take into account the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance and the useful life of the source. 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 51.304(a), may be exempted from this requirement by the Department. ( )

03. Exception to Incorporation by Reference of 40 CFR 52.21. Every use of the word Administrator in 40 CFR 52.21 means the Department except for the following provisions, where the reference remains to the EPA Administrator: 40 CFR 52.21(b)(17), 52.21(b)(43), 52.21(b)(48)(ii)(c), 52.21(b)(50)(i) and 52.21(l)(2). ( )

04. Nonmajor Requirements. If the proposed action meets the requirements of an exemption or exclusion under the provisions of 40 CFR 52.21 incorporated in Section 205, the nonmajor facility or stationary source permitting requirements of Sections 200 through 227 apply, including the exemptions in Sections 220 through 223. ( )

206. OPTIONAL OFFSETS FOR PERMITS TO CONSTRUCT.
The owner or operator of any proposed new or modified stationary source, new major facility, or major modification, that cannot meet the requirements of Subsections 202.01.c.vi., 203.02, 203.03, 204.02.d., 205.01 (40 CFR 52.21(k)), and 209.02.b.vi., may propose the use of an emission offset to meet those requirements and thereby obtain a permit to construct. Any proposed emission offset must satisfy the requirements for emission reduction credits, Section 460, and demonstrate, through appropriate dispersion modeling, that the offset will reduce ambient concentrations sufficiently to meet the requirements at all modeled receptors that could not otherwise have met the requirements. ( )

207. REQUIREMENTS FOR EMISSION REDUCTION CREDIT.
In order to be credited in a permit to construct, any emission reduction credit must satisfy the requirements of Section 460. ( )

208. DEMONSTRATION OF NET AIR QUALITY BENEFIT.
The demonstration of net air quality benefit must: ( )

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; ( )

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; ( )

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. ( )

209. PROCEDURE FOR ISSUING PERMITS.

01. General Procedures. General procedures for permits to construct. ( )

a. Within thirty (30) days after receipt of the application for a permit to construct, the Department will determine whether the application is complete or whether more information is needed and will notify the applicant of its findings in writing. ( )

b. Within sixty (60) days after the application is determined to be complete the Department will: ( )

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. ( )

ii. Notify the applicant in writing of the approval, or denial of the application if an opportunity for public comment is not required pursuant to Subsection 209.01.c. The Department will describe reasons for any denial; or ( )

c. An opportunity for public comment will be provided on all applications requiring a permit to construct. Public comment will be provided on an application for any new major facility or major modification, any new facility or modification that would affect any Class I area, any application that uses an interpollutant trade pursuant to Subsection 210.17, any application that the Department determines an opportunity for public comment is needed, and any application upon which the applicant or public so requests. ( )

i. The Department's proposed action, together with the information submitted by the applicant and the Department's analysis of the information, will 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. ( )

ii. The availability of such materials will 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. ( )

iii. A copy of such notice will be sent to the applicant and to appropriate federal, state and local agencies. ( )

iv. There will 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. ( )

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 Department deems that additional time is required to evaluate comments and information received, the Department will notify the applicant in writing of approval, or denial of the permit. The Department will describe the reasons for any denial. ( )

vi. All comments and additional information received during the comment period, together with the Department's final determination, will be made available to the public at the same location as the preliminary determination. ( )

d. A copy of each permit will be sent to EPA. ( )

02. Additional Procedures for Specified Sources. ( )

a. For any new major facility or major modification in an attainment or unclassifiable area for any regulated air pollutant. ( )

i. The public notice issued pursuant to Subsection 209.01.c.ii. will indicate the degree of increment consumption that is expected from the new major facility or major modification; and ( )

ii. The public notice issued pursuant to Subsection 209.01.c.ii. will 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. ( )

b. For any new major facility or major modification that would affect a federal Class I area or an integral vista of a mandatory federal Class I area. ( )

i. If the Department is notified of the intent to apply for a permit to construct, it will notify the appropriate Federal Land Manager within thirty (30) days; ( )

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, will 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; ( )

iii. Notice of every action related to the consideration of the permit will be sent to the EPA Administrator ( )

iv. The public notice issued pursuant to Subsection 209.01.c.ii. will 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. ( )

v. The notice of public hearing, if required, will 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. ( )

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 Department 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. ( )

03. 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 227. 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., only apply if the permit revision results in an increase in emissions authorized by the permit or if deemed appropriate by the Department. ( )

04. Permit to Construct Procedures for Tier I Sources. For Tier I sources that require a permit to construct, the owner or operator must either: ( )

a. Submit only the information required by Sections 200 through 214 for a permit to construct, in which case: ( )

i. A permit to construct or denial will be issued in accordance with Subsections 209.01.a. and 209.01.b. ( )

ii. The owner or operator may construct the source after permit to construct issuance or in accordance with Subsection 213.02.c. ( )

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 and complies with Subsection 380.02. ( )

iv. Unless a different time is specified by these rules, the applicable requirements contained in a permit to construct will be incorporated into the Tier I operating permit during renewal (Section 369). 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, must file a complete application to obtain a Tier I permit revision within twelve (12) months after commencing operation. ( )

v. The application or minor or significant permit modification request will be processed in accordance with timelines: Section 361 and Subsections 367.02 through 367.05. ( )

vi. The final Tier I operating permit action will incorporate the relevant terms and conditions from the permit to construct; or ( )

b. Submit all information required by Sections 200 through 214 for a permit to construct and Sections 300 through 386 for a Tier I operating permit, or Tier I operating permit modification, in which case: ( )

i. Completeness of the application will be determined within thirty (30) days. ( )

ii. The Department will prepare a proposed permit to construct or denial in accordance with Sections 200 through 214 and a draft Tier I operating permit or Tier I operating permit modification in accordance with Sections 300 through 386 within sixty (60) days. ( )

iii. The Department will 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 Tier I operating permit modification. ( )

iv. Except as otherwise provided by these rules, the Department will prepare and issue to the owner or operator a final permit to construct or denial within fifteen (15) days 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. ( )

v. The final permit to construct will be sent to EPA, along with the proposed Tier I operating permit or modification. The proposed Tier I operating permit or modification will be sent for review in accordance with Section 366. ( )

vi. The Tier I operating permit, or Tier I operating permit modification, will be issued in accordance with Section 367. 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 and complies with Subsection 380.02; or ( )

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: ( )

i. Completeness of the application will be determined within thirty (30) days. ( )

ii. The Department will 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. ( )

iii. The Department will provide for public comment and affected state review in accordance with Sections 209, 364, and 365 on the draft permit to construct or denial. ( )

iv. The Department will 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. ( )

v. Except as otherwise provided by these rules, the Department will 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. ( )

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. ( )

05. Transfer of Permits to Construct. ( )

a. Transfers by Revision. A permit to construct may be transferred to a new owner or operator in accordance with Subsection 209.04. ( )

b. Automatic Transfers. Any permit to construct, with or without transfer prohibition language, may be automatically transferred if: ( )

i. The current permittee notifies the Department at least thirty (30) days in advance of the proposed transfer date; ( )

ii. The notice provides written documentation signed by the current and proposed permittees containing a date for transfer of permit responsibility, designation of the proposed permittee's responsible official, and certification that the proposed permittee has reviewed and intends to operate in accordance with the permit terms and conditions; and ( )

iii. The Department does not notify the current permittee and the proposed permittee within thirty (30) days of receipt of the notice of the Department's determination that the permit must be revised pursuant to Subsection 209.04. If the Department does not issue such notice, the transfer is effective on the date provided in the notice described in Subsection 209.06.b.ii. ( )

210. DEMONSTRATION OF PRECONSTRUCTION COMPLIANCE WITH TOXIC STANDARDS.
In accordance with Subsection 203.03, the applicant must 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. For purposes of this section, Toxic Air Pollutant Reasonably Available Control Technology (T-RACT) is 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. ( )

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. ( )

02. Quantification of Emission Rates. ( )

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. ( )

i. Screening engineering analyses use unrefined conservative data. ( )

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. ( )

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. ( )

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. ( )

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 that are less than design capacity. ( )

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. ( )

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: ( )

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 ( )

ii. An emission standard that is T-RACT. ( )

03. Quantification of Ambient Concentrations. ( )

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. ( )

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. ( )

c. The uncontrolled ambient concentration of the source or modification is estimated by modeling the uncontrolled emission rate. ( )

d. The controlled ambient concentration of the source or modification is estimated by modeling the controlled emission rate. ( )

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 at the facility contributing an approved creditable decrease at the receptor site from the estimated ambient concentration from the modification at the receptor. ( )

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. ( )

g. The T-RACT ambient concentration of the source or modification is estimated by using refined

modeling and the T-RACT emission rate. ( )

h. The approved interpollutant ambient concentration from a source or modification for a toxic air pollutant at each receptor is calculated as follows: ( )

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. ( )

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. ( )

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. ( )

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. ( )

05. Uncontrolled Emissions. ( )

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. ( )

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. ( )

06. Uncontrolled Ambient Concentration. ( )

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. ( )

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. ( )

07. Controlled Emissions. ( )

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. ( )

b. If the source's or modification's controlled emission rate is less than or equal to the applicable screening emission level, no further procedure for demonstrating preconstruction compliance is required for that toxic air pollutant as part of the application process. ( )

08. Controlled Ambient Concentration. ( )

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. ( )

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. ( )

c. The Department will 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. ( )

09. Net Emissions. ( )

a. As provided in Section 007 (definition of net emissions increase) and Sections 460 and 461, the owner or operator may net emissions to demonstrate preconstruction compliance. ( )

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. ( )

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. ( )

d. The Department will 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. ( )

10. Net Ambient Concentration. ( )

a. As provided in Section 007 (definition of net emission increase) and Sections 460 and 461, the owner or operator may net ambient concentrations to demonstrate preconstruction compliance. ( )

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. ( )

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. ( )

d. The Department will 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. ( )

11. Toxic Air Pollutant Offset Ambient Concentration. ( )

a. As provided in Sections 206 and 460, the owner or operator may use offsets to demonstrate preconstruction compliance. ( )

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. ( )

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. ( )

d. The Department will 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. ( )

12. T-RACT Ambient Concentration for Carcinogens. ( )

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. This method may be used in

conjunction with netting (Subsection 210.09), and offsets (Subsection 210.11). ( )

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). ( )

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. ( )

d. The Department will 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. ( )

13. T-RACT Determination Processing. ( )

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. ( )

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 will be reinitiated. ( )

14. T-RACT Determination. T-RACT will be determined on a case-by-case basis by the Department as follows: ( )

a. The applicant must submit information to the Department identifying and documenting which control technologies or other requirements the applicant believes to be T-RACT. ( )

b. The Department will review the information submitted by the applicant and determine whether the applicant has proposed T-RACT. ( )

c. The technological feasibility of a control technology or other requirements for a particular source will be determined considering several factors including, but not limited to: ( )

i. Process and operating procedures, raw materials and physical plant layout. ( )

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. ( )

iii. The energy requirements of the control technology. ( )

d. The economic feasibility of a control technology or other requirement, including the costs of necessary mitigation measures, for a particular source will be determined considering several factors including, but not limited to: ( )

i. Capital costs. ( )

ii. Cost effectiveness, which is the annualized cost of the control technology divided by the amount of emission reduction. ( )

iii. The difference in costs between the particular source and other similar sources, if any, that have

implemented emissions reductions. ( )

e. If the Department determines that the applicant has proposed T-RACT, the Department will 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. ( )

f. If the Department determines that the applicant has not proposed T-RACT, the Department will 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 will deny the permit. ( )

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). ( )

16. Environmental Remediation Source. ( )

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 58.01.05.000 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 will be applied and operated until the estimated uncontrolled emissions from the remediation source are below the acceptable ambient concentration. ( )

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 58.01.05.000 et seq.) or the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 6901-6992k) or a consent order, will, for the purposes of these rules, be considered the same as any other new or modified source of toxic air pollution. ( )

c. For an environmental remediation source that functions to remediate or recover any release, spill, leak, discharge or disposal of any petroleum product or petroleum substance, the Department may waive the requirements of Section 513. ( )

17. Interpollutant Trading Ambient Concentration. ( )

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) ( )

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. ( )

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. ( )

d. The Department will include emission limits for all of the toxic air pollutants involved in the trade in the permit to construct. The Department will 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. ( )

18. Interpollutant Trading Determination Processing. ( )

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. ( )

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 will be reinitiated. ( )

19. Interpollutant Determination. ( )

a. The applicant may request an interpollutant trade if the Department determines that: ( )

i. The facility complies with an emission standard at least as stringent as best available control technology (BACT); and ( )

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 ( )

iii. The owner or operator has taken all available offsets; and ( )

iv. The owner or operator has identified all geographical areas and populations that may be impacted by the proposed interpollutant trade. ( )

b. Interpollutant trades will be approved or denied on a case-by-case basis by the Department. Approvals will be granted only if: ( )

i. The Department of Health and Welfare's Division of Health approves the interpollutant trade; and ( )

ii. The Department of Environmental Quality determines that the interpollutant trade will result in a overall benefit to the environment; and ( )

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 is submitted for all of the toxic air pollutants being traded; and ( )

iv. The reductions occur at the same facility where the proposed source or modification will be constructed; and ( )

v. The interpollutant trade will not cause an increase in the ambient concentrations of the carcinogenic toxic air pollutants involved in the particular interpollutant trade at any receptor site; and ( )

vi. The total cancer risk with the interpollutant trade will be less than the total cancer risk without the interpollutant trade; and ( )

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. ( )

20. 40 CFR Parts 60, 61 and 63 Sources. No demonstration of compliance with the toxic air pollutant provisions is required to obtain a permit to construct or to demonstrate permit to construct exemption criteria for a

new source or for modification of an existing source if the toxic air pollutant is also a listed hazardous air pollutant from: ( )

a. The equipment or activity covered by a 40 CFR Part 60, 61, or 63 rule; or ( )

b. The source category of equipment or activity addressed by a 40 CFR Part 60, 61, or 63 rule even if the equipment or activity is not subject to compliance requirements under the federal rule. ( )

211. CONDITIONS FOR PERMITS TO CONSTRUCT.

01. Reasonable Conditions. The Department may impose any reasonable conditions upon an approval, including conditions requiring the stationary source or facility to be provided with: ( )

a. Sampling ports of a size, number, and location as the Department may require; ( )

b. Safe access to each port; ( )

c. Instrumentation to monitor and record emissions data; ( )

d. Instrumentation for ambient monitoring to determine the effect emissions from the stationary source or facility may have, or are having, on the air quality in any area affected by the stationary source or facility; and ( )

e. Any other sampling and testing facilities as may be deemed reasonably necessary. ( )

02. Cancellation. The Department may cancel a permit to construct if the construction is not begun within two (2) years from the date of issuance, or if during the construction, work is suspended for one (1) year. ( )

03. Notification to The Department. Any owner or operator of a stationary source or facility subject to a permit to construct must furnish the Department written notifications as follows: ( )

a. A notification of the anticipated date of initial start-up of the stationary source or facility not more than sixty (60) days or less than thirty (30) days prior to such date; and ( )

b. A notification of the actual date of initial start-up of the stationary source or facility within fifteen (15) days after such date. ( )

04. Performance Test. Within sixty (60) days after achieving the maximum production rate at which the stationary source or facility will be operated but not later than one hundred eighty (180) days after initial start-up of such stationary source or facility, the owner or operator of such stationary source or facility may be required to conduct a performance test in accordance with methods and under operating conditions approved by the Department and furnish the Department a written report of the results of such performance test. ( )

a. Such test will be at the expense of the owner or operator. ( )

b. The Department may monitor such test and may also conduct performance tests. ( )

c. The owner or operator of a stationary source or facility must provide the Department fifteen (15) days prior notice of the performance test to afford the Department the opportunity to have an observer present. ( )

212. RELAXATION OF STANDARDS OR RESTRICTIONS.
At such time that a particular facility or modification becomes a major facility or major modification solely by virtue of a relaxation in any enforceable emission standard or restriction on the operating rate, hours of operation or on the type or amount of material combusted, stored or processed, that was used to exempt the facility or modification from certain requirements for a permit to construct, the requirements for new major facilities or major modifications will

apply to the facility or modification as though construction had not yet commenced. ( )

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. ( )

01. Pre-Permit Construction Eligibility. Pre-permit construction approval is available for new sources and modifications that are not considered major as defined in 40 CFR 52.21 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 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 must: ( )

a. Apply for a permit to construct in accordance with Subsections 202.01.a., 202.02, and 202.03 of this chapter. ( )

b. Consult with Department representatives prior to submitting a pre-permit construction approval application. ( )

c. Submit a pre-permit construction approval application that 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 and toxic air pollutants, such that they demonstrate compliance with all applicable air quality rules and regulations. The models must 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. ( )

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. ( )

02. Permit to Construct Procedures for Pre-Permit Construction. ( )

a. Within ten (10) days after the submittal of the pre-permit construction approval application, the owner or operator must 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 must 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 must be included in the application. ( )

b. Within fifteen (15) days after the receipt of the pre-permit construction approval application, the Department will 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. ( )

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 213.02.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. will become enforceable. The owner or operator must 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. ( )

d. If the pre-permit construction approval application is determined incomplete or the permit to construct is denied, the Department will issue an incompleteness or denial letter pursuant to Section 209. If the Department denies the permit to construct, then the owner or operator will have violated Section 201 on the date it commenced construction as defined in Section 006. The owner or operator may not contest the final permit to

construct decision based on the fact that they have already begun construction. ( )

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

01. Compliance with Federal MACT. All owners or operators of major sources of hazardous air pollutants that 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 must comply with the applicable MACT standard and such owners or operators are not subject to Subsections 214.04 and 214.05. ( )

02. Requirement to Obtain Preconstruction MACT Determination from the Department. 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 Department. The Department will 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 in Section 107. ( )

03. Development of MACT by the Department 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 must submit an application to the Department for a MACT standard determination. The Department will 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 in Section 107. ( )

215. MERCURY EMISSION STANDARD FOR NEW OR MODIFIED SOURCES.
No owner or operator may commence construction or modification of a stationary source or facility that results in an increase in annual potential emissions of mercury of twenty-five (25) pounds or more unless the owner or operator has obtained a permit to construct under Sections 200 through 227. The permit to construct application must include an MBACT analysis for the new or modified source or sources for review and approval by the Department. A determination of applicability under Section 215 will be based upon the best available information. Fugitive emissions are not included in a determination of applicability under Section 215. ( )

01. Exemptions. New or modified stationary sources within a source category subject to 40 CFR Part 63 are exempt from the requirements of Section 215. ( )

02. Applicability. Except as provided in Subsection 215.01, Section 215 applies to all new or modified sources. ( )

216. -- 219. (RESERVED)

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 precludes 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. For purposes of Sections 220 through 223, fugitive emissions are not considered in determining whether a source meets the applicable exemption criteria unless required by federal law. 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 and 223 or 222 and 223 (as required): ( )

a. The maximum capacity of a source to emit an air pollutant under its physical and operational design without consideration of limitations on emission such as air pollution control equipment, restrictions on hours of operation and restrictions on the type and amount of material combusted, stored or processed would not: ( )

i. Equal or exceed one hundred (100) tons per year of any regulated air pollutant. ( )

ii. Cause an increase in the emissions of a major facility that equals or exceeds the significant

emissions rates set out in the definition of significant at Section 006. ( )

b. The source is not part of a proposed new major facility or part of a proposed major modification. ( )

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., must maintain documentation on site that identifies the exemption determined to apply to the source and verify that the source qualifies for the identified exemption. The records and documentation must 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, whichever is greater, or until such time as a permit to construct or an operating permit is issued that covers the operation of the source. The owner or operator must submit the documentation to the Department upon request. ( )

221. CATEGORY I EXEMPTION.
No permit to construct is required for a source that satisfies the criteria set forth in Section 220 and the following: ( )

01. Below Regulatory Concern. The maximum capacity of a source to emit an air pollutant under its physical and operational design considering limitations on emissions such as air pollution control equipment, restrictions on hours of operation and restrictions on the type and amount of material combusted, stored or processed must be less than ten percent (10%) of the significant emission rates set out in the definition of significant at Section 006. ( )

02. Radionuclides. The source is not required to obtain approval to construct in accordance with the applicable radionuclides standard in 40 CFR Part 61, Subpart H. ( )

03. Toxic Air Pollutants. The source complies with Section 223. ( )

04. Mercury. The source has potential emissions that are less than twenty-five (25) pounds per year of mercury. Fugitive emissions are not to be included in the calculation of potential mercury emissions. ( )

222. CATEGORY II EXEMPTION.
No permit to construct is required for the following sources. ( )

01. Exempt Source. A source that satisfies the criteria set forth in Section 220 and is specified below: ( )

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 must: ( )

i. Comply with Section 223. ( )

ii. Not be required to obtain approval to construct in accordance with the applicable radionuclides standard in 40 CFR Part 61, Subpart H. ( )

b. Environmental characterization activities including emplacement and operation of field instruments, drilling of sampling and monitoring wells, sampling activities, and environmental characterization activities. ( )

c. Stationary internal combustion engines of less than or equal to six hundred (600) horsepower and that 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 may not be used. To qualify for this exemption, the source must be operated in accordance with the following: ( )

i. One hundred (100) horsepower or less -- unlimited hours of operation. ( )

ii. One hundred one (101) to two hundred (200) horsepower -- less than four hundred fifty (450) hours per month. ( )

iii. Two hundred one (201) to four hundred (400) horsepower -- less than two hundred twenty-five (225) hours per month. ( )

iv. Four hundred one (401) to six hundred (600) horsepower -- less than one hundred fifty (150) hours per month. ( )

d. Stationary internal combustion engines used exclusively for emergency purposes that are operated less than five hundred (500) 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 may not be used. ( )

e. A pilot plant is defined as a stationary source located at least one quarter (¼) mile from any sensitive receptor; functions to test processing, mechanical, or pollution control equipment's full-scale feasibility; and does not produce products for sale except in developmental quantities. It uses a slip stream of no more than ten percent (10%) from an existing process stream and satisfies the following: ( )

i. The source must 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); ( )

ii. The source is not required to obtain approval to construct in accordance with the applicable radionuclides standard in 40 CFR Part 61, Subpart H; and ( )

iii. The exemption for a pilot plant terminates one (1) year after the commencement of operations and may not be renewed. ( )

02. Other Exempt Sources. A source that satisfies the criteria set forth in Section 220 and that is specified below: ( )

a. Air conditioning or ventilating equipment not designed to remove air pollutants generated by or released from equipment. ( )

b. Air pollutant detectors or recorders, combustion controllers, or combustion shutoffs. ( )

c. Fuel burning equipment for indirect heating and for heating and reheating furnaces using natural gas, propane gas, liquefied petroleum gas, or biogas (gas produced by the anaerobic decomposition of organic material through a controlled process) with hydrogen sulfide concentrations less than two hundred (200) ppmv exclusively with a capacity of less than fifty (50) million btu's per hour input. ( )

d. Other fuel burning equipment for indirect heating with a capacity of less than one million (1,000,000) btu's per hour input. ( )

e. Mobile internal combustion engines, marine installations and locomotives. ( )

f. Agricultural activities and services. ( )

g. Retail gasoline, natural gas, propane gas, liquefied petroleum gas, distillate fuel oils and diesel fuel sales. ( )

h. Used Oil Fired Space Heaters which comply with all the following criteria: ( )

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 58.01.05.015, "Rules and Standards for Hazardous Waste"; ( )

(1) For the purposes of Subsection 222.02.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. ( )

(2) For the purposes of Subsection 222.02.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. ( )

ii. Any used oil burned is not contaminated by added toxic substances such as solvents, antifreeze or other household and industrial chemicals; ( )

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; ( )

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 ( )

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. ( )

i. Multiple chamber crematory retorts used to cremate human or animal remains using natural gas exclusively with a maximum average charge capacity of two hundred (200) pounds of remains per hour and a minimum secondary combustion chamber temperature of one thousand five hundred (1500) degrees Fahrenheit while operating. ( )

j. Petroleum environmental remediation source by vapor extraction with an operation life not to exceed five (5) years (except for landfills). The short-term adjustment factor in Subsection 210.15 cannot be used if the remediation is within five hundred (500) feet of a sensitive receptor. Forms are available at the DEQ website at http://www.deq.idaho.gov, to help assist sources in this exemption determination. ( )

k. Dry cleaning facilities that are not major under, but subject to, 40 CFR Part 63, Subpart M. ( )

223. EXEMPTION CRITERIA AND REPORTING REQUIREMENTS FOR TOXIC AIR POLLUTANT EMISSIONS.
No permit to construct for toxic air pollutants is required for a source that satisfies any of the exemption criteria below, the recordkeeping criteria in Subsection 220.02, and reporting criteria in Subsection 223.04: ( )

01. Below Regulatory Concern (BRC) Exemption. The source 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. ( )

02. Level I Exemption. To obtain a Level I exemption, the source must satisfy the following criteria:

a. The uncontrolled emission rate (refer to Section 210) for all toxic air pollutants must be less than or equal to all applicable screening emission levels listed in Sections 585 and 586; or ( )

b. The uncontrolled ambient concentration (refer to Section 210) for all toxic air pollutants at the point of compliance must be less than or equal to all applicable acceptable ambient concentrations listed in Sections 585 and 586. ( )

03. Level II Exemption. To obtain a Level II exemption, the maximum capacity of a source to emit a

toxic air pollutant under its physical and operational design considering limitations on emissions such as air pollution control equipment, restrictions on hours of operation and restrictions on the type and amount of material combusted, stored or processed at the point of compliance is less than or equal to ten percent (10%) of all applicable screening emission levels listed in Sections 585 and 586. ( )

04. Toxic Air Pollutant Exemption Report. The owner or operator of a source claiming a Level I or II exemption must submit a certified report, on or before May 1 for the previous calendar year, to the Department for each Level I or II exemption determination. The owner or operator is not required to annually submit a certified report for a Level I or II exemption determination previously claimed and reported. The report must state the date construction has or will commence and must include copies of all exemption determinations completed by the owner or operator for each Level I and II exemption. ( )

224. PERMIT TO CONSTRUCT APPLICATION FEE.
All applicants for a permit to construct must submit a permit to construct application fee of one thousand dollars ($1,000) to the Department at the time of the original submission of the application. The permit to construct application fee is not required to be submitted for: ( )

01. Exemption Applicability Determinations. Exemption applicability determinations set forth in Sections 220 through 223; ( )

02. Typographical Errors. Changes to correct typographical errors; or ( )

03. Name or Ownership Change. A change in the name or ownership of the holder of a permit to construct when the Department determines no other review or analysis is required. ( )

225. PERMIT TO CONSTRUCT PROCESSING FEE.
A permit to construct processing fee, calculated by the Department pursuant to the categories provided in the following table, must be paid to the Department by the person receiving the permit. The applicable processing fee category is determined by adding together the amount of increases of regulated pollutant emissions and subtracting any decreases of regulated pollutant emissions as identified in the permit to construct. The fee calculation does not include fugitive emissions.

PERMIT TO CONSTRUCT CATEGORY	FEE
General permit, no facility-specific requirements (Defined as a source category specific permit for which the Department has developed standard emission limitations, operating requirements, monitoring and recordkeeping requirements, and that require minimal engineering analysis. General permit facilities may include portable concrete batch plants, portable hot-mix asphalt plants and portable rock crushing plants.)	$500
New source or modification to existing source with increase of emissions of less than one (1) ton per year	$1,000
New source or modification to existing source with increase of emissions of one (1) to less than ten (10) tons per year	$2,500
New source or modification to existing source with increase of emissions of ten (10) to less than one hundred (100) tons per year	$5,000
Nonmajor new source or modification to existing source with increase of emissions of one hundred (100) tons per year or more	$7,500
New major facility or major modification	$10,000
Permit modifications where no engineering analysis is required	$250
Application submittals for exemption applicability determinations, typographical errors, and name and ownership changes as described in Subsections 224.01, 224.02, 224.03	$0.00

( )

226. PAYMENT OF FEES FOR PERMITS TO CONSTRUCT.

01. Fee Submittal. The permit to construct application fee must be submitted with the application. The permit to construct processing fee is payable upon receipt of an assessment sent to the person receiving a permit by the Department. Information for making payments is available at http://www.deq.idaho.gov. ( )

02. Delinquency. No application for a permit to construct will be processed by the Department unless accompanied by a permit to construct application fee. No permit to construct will be issued by the Department until the Department has received the permit to construct processing fee. ( )

227. RECEIPT AND USAGE OF FEES.
Permit to construct application and processing fee receipts will be deposited by the Department into a stationary source permit account. Monies from this account will be used solely toward technical, legal and administrative support of the Department's permit to Construct and Tier II permit programs and will not be used for those activities supported by the fund created for implementing the operating permit program required under Title V of the federal Clean Air Act. The permit to construct application fee payable under Section 227 will be retained by the Department regardless of whether a permit to construct is issued by the Department in response to an application. ( )

228. -- 299. (RESERVED)

300. PROCEDURES AND REQUIREMENTS FOR TIER I OPERATING PERMITS.
Sections 300 through 397 establish requirements and procedures for the issuance of Tier I operating permits. Unless specifically identified in this Chapter, definitions for the Tier 1 operating permit program are located in 40 CFR Part 70, incorporated by reference in Section 107. ( )

301. REQUIREMENT TO OBTAIN TIER I OPERATING PERMIT.

01. Prohibition. No owner or operator may operate any Tier I source without an effective Tier I operating permit. ( )

02. Exceptions. No Tier I operating permit is required if the owner or operator is in compliance with Sections 311 through 315 and the Department has not taken final action on the application. ( )

302. OPTIONAL TIER I OPERATING PERMIT.
Any facility listed in Section 301 not required to obtain a Tier I operating permit may opt to apply for a Tier I operating permit. ( )

303. -- 310. (RESERVED)

311. STANDARD PERMIT APPLICATIONS.
Sections 311 through 315 establish standard Tier I operating permit application procedures. ( )

312. DUTY TO APPLY.
For each Tier I source, the owner or operator must submit a timely and complete permit application in accordance with Sections 311 through 315. ( )

313. TIMELY APPLICATION.

01. New Tier 1 Operating Permits. For sources that become Tier I sources located at a facility not previously authorized by a Tier I operating permit, the owner or operator of the Tier I source must submit to the Department a complete application for a 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. ( )

02. Renewals of Tier I Operating Permits. The owner or operator of the Tier I source must submit a

complete application to the Department for a renewal of the Tier I operating permit at least six (6) 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. ( )

03. 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. ( )

314. REQUIRED STANDARD APPLICATION FORM AND REQUIRED INFORMATION.

01. General Requirements. ( )

a. Applications must be submitted on a form or forms provided by the Department or by other means specified by these rules or the Department. The application must be certified by the responsible official in accordance with Section 123. ( )

i. If the Tier I source is regulated under 42 U.S.C. Sections 7651 through 7651o, the owner or operator must also submit nationally standardized acid rain forms provided by EPA. ( )

b. All information must 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. ( )

02. General Information for the Facility. ( )

a. Provide identifying information, including the name, address and telephone number of: ( )

i. The owner; ( )

ii. The operator; ( )

iii. The facility where the Tier I source is located; ( )

iv. The registered agent of the owner, if any; ( )

v. The registered agent of the operator, if any; ( )

vi. The responsible official, if other than the owner or operator; and ( )

vii. The contact person. ( )

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 must include narrative and applicable SIC codes. ( )

c. Provide a general description of each process line affecting a Tier I source. ( )

03. Specific Information for Each Emissions Unit. The owner or operator must provide, in an itemized format, all of the information identified in Subsections 314.04 through 314.11 for each emissions unit, unless the emissions unit is an insignificant activity. ( )

04. Emissions. ( )

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 must 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). ( )

b. Emissions rates must be quantified in tons per year (tpy) and in such additional terms as are necessary to determine compliance consistent with the applicable test method. ( )

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. ( )

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. ( )

e. Identify and describe all air pollution control equipment and compliance monitoring devices or activities. ( )

f. Identify and describe all limitations on source operation or any work practice standards affecting emissions. ( )

g. Provide the calculations on which the information provided under Subsections 314.04.a. through 314.04.e. is based. ( )

05. Applicable Requirements. ( )

a. Cite and describe all applicable requirements affecting the emissions unit; and ( )

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. ( )

06. 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. ( )

07. 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. ( )

08. Alternative Operating Scenarios. ( )

a. Identify all requested alternative operating scenarios. ( )

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. ( )

09. Compliance Certifications. ( )

a. Provide a compliance certification regarding the compliance status of each emissions unit at the time the application is submitted to the Department that: ( )

i. Identifies all applicable requirements affecting each emissions unit. ( )

ii. Certifies the compliance status of each emissions unit with each of the applicable requirements. ( )

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. ( )

iv. Certifies the compliance status of the emissions unit with any applicable enhanced monitoring

requirements. ( )

v. Certifies the compliance status of the emissions unit with any applicable enhanced compliance certification requirements. ( )

vi. Provides all other information necessary to determining the compliance status of the emissions unit. ( )

b. Provide a schedule for submission of compliance certifications during the term of the Tier I operating permit. The schedule must 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. ( )

10. Compliance Plans. ( )

a. Provide a compliance description as follows: ( )

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. ( )

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. ( )

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. ( )

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 314.10.b. ( )

b. All compliance schedules must: ( )

i. Include a schedule of remedial measures leading to compliance, including an enforceable sequence of actions and specific dates for achieving milestones and achieving compliance. ( )

ii. Incorporate the terms and conditions of any applicable consent order, judicial order, judicial consent decree, administrative order, settlement agreement or judgment. ( )

iii. Be supplemental to, and not sanction noncompliance with, the applicable requirements on which it is based. ( )

c. Provide 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 (1) is specified in the underlying applicable requirement or by the Department. ( )

11. Trading Scenarios. ( )

a. Identify all requested trading scenarios authorized by Section 440. ( )

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. ( )

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 will not be approved. ( )

12. Additional Information. Provide additional information that the Department determines necessary to perform its functions efficiently and effectively. 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. ( )

315. DUTY TO SUPPLEMENT OR CORRECT APPLICATION.

01. Failure to Submit. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application must, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. ( )

02. Necessary Additional Information. If, while processing an application that has been determined or deemed to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, the Department may request such information in writing and set a deadline for a response. The applicant must submit the requested information on or before the deadline set by the Department. ( )

03. Additional Information After Completeness. The applicant must promptly provide additional information as necessary to address any requirements that become applicable to the Tier I source after the date a complete application was filed but prior to release of a proposed action. ( )

316. EFFECT OF INACCURATE INFORMATION IN APPLICATIONS OR FAILURE TO SUBMIT RELEVANT INFORMATION.
Notwithstanding the shield provisions of Section 325, the owner or operator is 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. ( )

317. INSIGNIFICANT ACTIVITIES.

01. Applicability Criteria. This Section contains the criteria for identifying insignificant activities for the purposes of the Tier I operating permit program. Notwithstanding any other provision of this rule, no emission unit or activity subject to an applicable requirement qualifies as an insignificant emission unit or activity. Applicants may not exclude from Tier I operating permit applications information that is needed to determine whether the facility is major or whether the facility is in compliance with applicable requirements. ( )

a. Presumptively insignificant emission units. ( )

i. Except as provided above, the activities listed in this section may be omitted from the permit application. ( )

(1) Blacksmith forges. ( )

(2) Mobile transport tanks on vehicles except for those containing asphalt and not including loading and unloading operations. ( )

(3) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities. ( )

(4) Storage tanks, reservoirs and pumping and handling equipment of any size, limited to soaps, lubricants, lubricating oil, treater oil, hydraulic fluid, vegetable oil, grease, animal fat, aqueous salt solutions or other materials and processes using appropriate lids and covers where there is no generation of objectionable odor or airborne particulate matter. ( )

(5) Pressurized storage of oxygen, nitrogen, carbon dioxide, air, or inert gases. ( )

(6) Storage of solid material, dust-free handling. ( )

(7) Boiler water treatment operations, not including cooling towers. ( )

(8) Vents from continuous emission monitors and other analyzers. ( )

(9) Vents from rooms, buildings and enclosures that contain permitted emissions units or activities from which local ventilation, controls, and separate exhaust are provided. ( )

(10) Internal combustion engines for propelling or powering a vehicle. ( )

(11) Recreational fireplaces including the use of barbecues, campfires and ceremonial fires. ( )

(12) Brazing, soldering, and welding equipment and cutting torches for use in cutting metal wherein components of the metal do not generate hazardous air pollutants or hazardous air pollutant precursors. ( )

(13) Atmospheric generators used in connection with metal heat treating processes using non-hazardous air pollutant metals as the primary raw material. ( )

(14) Non-hazardous air pollutant metal finishing or cleaning using tumblers. ( )

(15) Drop hammers or hydraulic presses for forging or metalworking. ( )

(16) Electrolytic deposition, used to deposit brass, bronze, copper, iron, tin, zinc, precious and other metals not listed as the parents of hazardous air pollutants. ( )

(17) Equipment used for surface coating, painting, dipping or spraying operations, except those that will emit volatile organic compound or hazardous air pollutant. ( )

(18) Process water filtration systems. ( )

(19) Portable electrical generators that can be moved by hand from one (1) location to another. Moved by hand means that it can be moved without the assistance of any motorized or non-motorized vehicle, conveyance, or device. ( )

(20) Plastic and resin curing equipment, excluding FRP and provided these activities are not related to the source's primary business activity. ( )

(21) Extrusion equipment, metals, minerals, plastics, grain or wood used without solvents containing hazardous air pollutant. ( )

(22) Presses and vacuum forming, for curing rubber and plastic products or for laminating plastics without solvents containing hazardous air pollutants present. ( )

(23) Roller mills and calendars for use with rubber and plastics without solvents containing hazardous air pollutants. ( )

(24) Conveying and storage of plastic pellets. ( )

(25) Plastic compression, injection, and transfer molding and extrusion, rotocasting, pultrusion, blowmolding, excluding acrylics, PVC, polystyrene and related copolymers and the use of plasticizer. Only oxygen, carbon dioxide, nitrogen, air or inert gas allowed as blowing agent. ( )

(26) Plastic pipe welding. ( )

(27) Wax application in either a molten state or aqueous suspension. ( )

(28) Plant maintenance and upkeep including routine housekeeping, janitorial activities, cleaning and preservation of equipment, preparation for and painting of structures or equipment, retarring roofs, applying insulation to buildings in accordance with applicable environmental and health and safety requirements and lawn, landscaping and groundskeeping activities. Provided these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and not otherwise triggering a permit modification. ( )

(29) Agricultural activities on a facility's property that are not subject to registration or new source review by the permitting authority. ( )

(30) Maintenance of paved streets and parking lots including paving, stripping, salting, sanding, cleaning and sweeping of streets and paved surfaces. Provided these activities are not related to the source's primary business activity, do not otherwise trigger a permit modification, and fugitive emissions are reasonably controlled as required in Section 808. ( )

(31) Ultraviolet curing processes. ( )

(32) Hot melt adhesive application with no volatile organic compounds or hazardous air pollutants in the adhesive formula. ( )

(33) Laundering, dryers, extractors, tumblers for fabrics, using water solutions of bleach and/or detergents except for boilers. ( )

(34) Steam cleaning operations. ( )

(35) Steam sterilizers. ( )

(36) Food service activities including cafeterias, kitchen facilities and barbecues located at a source for providing food service on premises. ( )

(37) Portable drums and totes. ( )

(38) Fluorescent light tube and aerosol can crushing in units designed to reduce emissions from these activities. ( )

(39) Flares used to indicate danger to the public. ( )

(40) General vehicle maintenance including vehicle exhaust from repair facilities provided these activities are not related to the source's primary business activity and do not have applicable requirements under title VI of the Clean Air Act. ( )

(41) Comfort air conditioning or air-cooling systems, not used to remove air contaminants from specific equipment. ( )

(42) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves, and storage tanks subject to size and service limitations expressed elsewhere in this section. ( )

(43) Natural and forced air vents for bathroom/toilet facilities. ( )

(44) Office activities. ( )

(45) Equipment used for quality control/assurance or inspection purposes, including sampling equipment used exclusively to withdraw materials for laboratory analyses and testing. ( )

(46) Fire suppression systems and similar safety equipment and equipment used to train firefighters including fire drill pits. ( )

(47) Materials and equipment used by, and activity related to operation of infirmary; infirmary is not the source's business activity except equipment subject to 40 CFR Part 61 for radionuclides. ( )

(48) Satellite Accumulation Areas (SAAs) and Temporary Accumulation Areas (TAAs) managed in compliance with RCRA. ( )

(49) Equipment for carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, shot blasting, sintering, or polishing: Ceramics, glass, leather, metals, plastics, rubber, concrete, paper stock, or wood provided that these activities are not conducted as part of a manufacturing process. ( )

(50) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment subject to other exemption limitation, e.g., internal and external combustion equipment. ( )

(51) Slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment. ( )

(52) Ozonation equipment. ( )

(53) Temporary construction activities at a facility provided that the installation or modification of emissions units must comply with all applicable federal, state, and local rules and regulations. ( )

(54) Batch loading and unloading of solid phase catalysts. ( )

(55) Pulse capacitors. ( )

(56) Gas cabinets using only gases that are not regulated air pollutants. ( )

(57) CO2 lasers, used only on metals and other materials that do not emit hazardous air pollutants in the process. ( )

(58) Structural changes not having air contaminant emissions. ( )

(59) Equipment used to mix, package, store and handle soaps, lubricants, vegetable oil, grease, animal fat, and non-volatile aqueous salt solutions, provided appropriate lids and covers are utilized. ( )

(60) Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy, e.g., blueprint activity, photocopiers, mimeograph, telefax, photographic developing, and microfiche provided these activities are not related to the source's primary business activity. ( )

(61) Pharmaceutical and cosmetics packaging equipment. ( )

(62) Paper trimmers/binders provided these activities are not related to the source's primary business activity. ( )

(63) Bench-scale laboratory equipment and laboratory equipment used exclusively for physical or chemical analysis, including associated vacuum producing devices but excluding research and development facilities. ( )

(64) Repair and maintenance shop activities not related to the source's primary business activity. ( )

(65) Handling equipment and associated activities for glass and aluminum which is destined for recycling, provided these activities are not related to the source's primary business activity. ( )

(66) Hydraulic and hydrostatic testing equipment. ( )

(67) Batteries and battery charging stations, except at battery manufacturing plants. ( )

(68) Porcelain and vitreous enameling equipment. ( )

(69) Solid waste containers.

(70) Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants. ( )

(71) Shock chambers. ( )

(72) Wire strippers. ( )

(73) Humidity chambers. ( )

(74) Solar simulators. ( )

(75) Environmental chambers not using hazardous air pollutant gases. ( )

(76) Totally enclosed conveyors not including transfer points. ( )

(77) Steam vents and safety relief valves. ( )

(78) Air compressors, pneumatically operated equipment, systems, and hand tools. ( )

(79) Steam leaks. ( )

(80) Boiler blow-down tank. ( )

(81) Salt cake mix tanks at pulp mills. ( )

(82) Digester chip feeders at pulp mills. ( )

(83) Weak liquor and filter tanks at pulp mills. ( )

(84) Process water and white water storage tanks at pulp mills. ( )

(85) Demineralizer water tanks, demineralization, demineralizer vents, and oxygen scavenging (deaeration) of water. ( )

(86) Clean condensate tanks. ( )

(87) Alum tanks. ( )

(88) Broke beaters, repulpers, pulp and repulping tanks, stock chests and pulp handling. ( )

(89) Lime and mud filtrate tanks. ( )

(90) Hydrogen peroxide tanks. ( )

(91) Lime mud washer. ( )

(92) Lime mud filter. ( )

(93) Hydro and liquor clarifiers or filters and storage tanks and associated pumping, piping, and handling. ( )

(94) Lime grits washers, filters, and handing. ( )

(95) Lime silos and feed bins. ( )

(96) Paper forming. ( )

(97) Starch cooking. ( )

(98) Pulp stock cleaning and screening. ( )

(99) Paper winders or other paper converting equipment. ( )

(100) Sludge dewatering and wet sludge handling. ( )

(101) Screw press vents. ( )

(102) Pond dredging. ( )

(103) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation. ( )

(104) Non-PCB oil filled circuit breakers, oil filled transformers and other equipment that is analogous to, but not considered to be, a tank. ( )

(105) Lab-scale electric or steam-heated drying ovens and autoclaves. ( )

(106) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems. ( )

(107) Water cooling towers processing exclusively noncontact cooling water. ( )

(108) Paper coating and sizing. ( )

(109) Process wastewater and ponds. ( )

(110) Outdoor firearms practice ranges. ( )

b. Insignificant activities on the basis of size or production rate. ( )

i. Units and activities listed in this section must be listed in the permit application. The following units and activities are determined to be insignificant based on their size or production rate: ( )

(1) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than two hundred sixty (260) gallon capacity thirty five cubic feet (35cft), heated only to the minimum extend to avoid solidification if necessary. ( )

(2) Operation, loading and unloading of storage tanks, not greater than one thousand one hundred (1,100) gallon capacity, with lids or other appropriate closure, not for use with hazardous air pollutants, maximum (max.) vp five-hundred fifty (550) mm Hg. ( )

(3) Operation, loading and unloading of volatile organic compound storage tanks, ten thousand (10,000) gallons capacity or less, with lids or other appropriate closure, vp not greater than eighty (80) mm Hg at twenty-one (21) degrees C. Operation, loading and unloading of gasoline storage tanks, ten thousand (10,000) gallons capacity or less, with lids or other appropriate closure. ( )

(4) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas (LPG), storage tanks, vessel capacity under forty thousand (40,000) gallons. ( )

(5) Combustion source, less than five million (5,000,000) Btu/hr, exclusively using natural gas, butane, propane, and/or LPG. ( )

(6) Combustion source, less than five hundred thousand (500,000) Btu/hr, using any commercial fuel containing less than four-tenths percent (.4%) by weight sulfur for coal or less than one percent (1%) by weight sulfur for other fuels. ( )

(7) Combustion source, of less than one million (1,000,000) Btu/hr, if using kerosene, No. 1 or No. 2 fuel oil. ( )

(8) Combustion source, not greater than five hundred thousand (500,000) Btu/hr, if burning waste wood, wood waste or waste paper. ( )

(9) Welding using not more than one (1) ton per day of welding rod. ( )

(10) Foundry sand molds, unheated and using binders with less than twenty-five hundredths percent (.25%) free phenol by sand weight. ( )

(11) "Parylene" coaters using less than five hundred (500) gallons of coating per year. ( )

(12) Printing and silkscreening, using less than two (2) gallon/day of any combination of the following: Inks, coatings, adhesives, fountain solutions, thinners, retarders, or nonaqueous cleaning solutions. ( )

(13) Water cooling towers and ponds, not using chromium-based corrosion inhibitors, not used with barometric jets or condensers, not greater than ten thousand (10,000) gpm, not in direct contact with gaseous or liquid process streams containing regulated air pollutants. ( )

(14) Combustion turbines, of less than five hundred (500) HP. ( )

(15) Batch solvent distillation, not greater than fifty-five (55) gallons batch capacity. ( )

(16) Municipal and industrial water chlorination facilities of not greater than twenty million (20,000,000) gallons per day capacity. The exemption does not apply to wastewater treatment. ( )

(17) Surface coating, using less than two (2) gallons per day. ( )

(18) Space heaters and hot water heaters using natural gas, propane or kerosene and generating less than five million (5,000,000) Btu/hr. ( )

(19) Tanks, vessels, and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids excluding: ( )

(a) Ninety-nine percent (99%) or greater H2SO4 or H3PO4. ( )

(b) Seventy percent (70%) or greater HNO3. ( )

(c) Thirty percent (30%) or greater HC1. ( )

(d) More than one (1) liquid phase where the top phase is more than one percent (1%) volatile organic compounds. ( )

(20) Equipment used exclusively to pump, load, unload, or store high boiling point organic material, material with initial boiling point (IBP) not less than one hundred fifty (150) degrees C or vapor pressure (vp) not more than five (5) mm Hg at twenty-one (21) degrees C with lids or other appropriate closure. ( )

(21) Smokehouses under twenty (20) square feet. ( )

(22) Milling and grinding activities, using paste-form compounds with less than one percent (1%) volatile organic compounds. ( )

(23) Rolling, forging, drawing, stamping, shearing, or spinning hot or cold metals. ( )

(24) Dip-coating operations, using materials with less than one percent (1%) volatile organic compounds. ( )

(25) Surface coating, aqueous solution or suspension containing less than one percent (1%) volatile organic compounds. ( )

(26) Cleaning and stripping activities and equipment, using solutions having less than one percent (1%) volatile organic compounds by weight. On metallic substrates, acid solutions are not considered for listing as insignificant. ( )

(27) Storage and handling of water-based lubricants for metal working where the organic content of the lubricant is less than ten percent (10%). ( )

(28) Municipal and industrial wastewater chlorination facilities of not greater than one million (1,000,000) gallons per day capacity. ( )

(29) Domestic sewage treatment ponds with average flowrates less than four hundred (400) gpm or treating waste from less than three thousand (3000) people from non-residential sources. ( )

(30) An emission unit or activity with potential emissions less than or equal to the significant emission rate as defined in Section 006 and actual emissions less than or equal to ten percent (10%) of the levels contained in Section 006 of the definition of significant and no more than one (1) ton per year of any hazardous air pollutant. ( )

318. -- 321. (RESERVED)

322. STANDARD CONTENTS OF TIER I OPERATING PERMITS.
All Tier I operating permits must contain and the Department has the authority to impose, implement and enforce, the following elements for all permitted operating scenarios and emissions trading scenarios. Fugitive emissions must be included in the Tier I operating permit in the same manner as stack emissions. All Tier 1 operating permits must: ( )

01. Emission Limitations and Standards. 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; ( )

02. Authority for and Form of Terms and Conditions. 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; ( )

03. Terms or Conditions for Applicable Requirements. 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; ( )

04. Alternative Operating Scenarios. 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; ( )

05. Trading Scenarios. ( )

a. 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 that ensure that any emission trade is quantifiable, accountable, enforceable and based on replicable procedures. ( )

b. State that no permit revision is required under approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in the permit; and ( )

c. 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; ( )

06. Monitoring. Contain the following with respect to monitoring: ( )

a. Sufficient monitoring to ensure compliance with all of the terms and conditions of the Tier I operating permit; ( )

b. All emissions monitoring and analysis procedures or test methods required under the applicable requirements; ( )

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 ( )

d. Requirements that the Department determines are necessary, concerning the use, maintenance and installation of monitoring equipment or methods; ( )

07. Recordkeeping. Incorporate by reference all applicable recordkeeping requirements and require the following: ( )

a. Sufficient recordkeeping to assure compliance with all the terms and conditions of the Tier I operating permit; ( )

b. Recording of monitoring information including but not limited to: ( )

i. The date, place (as defined in the Tier I operating permit) and time of sampling or measurements; ( )

ii. The date(s) analyses were performed; ( )

iii. The company or entity that performed the analyses; ( )

iv. The analytical techniques or methods used; ( )

v. The results of such analyses; and ( )

vi. The operating conditions existing at the time of sampling or measurement; and ( )

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; ( )

08. Reporting. Incorporate by reference all applicable reporting requirements and require the following: ( )

a. Sufficient reporting to assure compliance with all of the terms and conditions of the Tier I operating permit; ( )

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 must be submitted in accordance with the requirements of Sections 130 through 136. For all other deviations, the report must be submitted in accordance with Subsection 322.08.c. unless the permit specifies another time frame. The reports must describe the probable cause of such deviations and any corrective actions or preventative measures taken; and ( )

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; ( )

09. Testing. Contain terms and conditions requiring sufficient testing to assure compliance with all of the terms and conditions of the Tier I operating permit; ( )

10. Compliance Schedule and Progress Reports. Contain terms and conditions regarding the compliance plan submitted in the application in accordance with Subsection 314.10 including: ( )

a. For 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: ( )

i. A schedule of remedial measures leading to compliance including an enforceable sequence of actions and specific dates for achieving the milestones and achieving compliance; ( )

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; ( )

iii. A requirement that any progress report must 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; ( )

iv. All terms and conditions of any applicable consent order, judicial order, judicial consent decree, administrative order, settlement agreement or judgment; and ( )

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; ( )

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 must include such compliance schedule; and ( )

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 must include a statement that the permittee must meet, on a timely basis, all such applicable requirements; ( )

11. Periodic Compliance Certifications. Require submittal of compliance certifications during the term of the permit for each emissions unit to the Department and the EPA as follows: ( )

a. Compliance certifications for all emissions units must be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department; ( )

b. The compliance certification for each emissions unit must address all 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; ( )

c. The compliance certification must be in an itemized format providing: ( )

i. The identification of each term or condition of the Tier I operating permit that is the basis of the certification; ( )

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. Such methods and other means must include, at a minimum, the methods and means required under Subsections 322.06, 322.07, and 322.08; ( )

iii. The status of compliance with the terms and conditions of the Tier I operating permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification must be based on the method or means designated in Subsection 322.11.c.ii. above, identify each deviation and take it into account in the compliance certification, and 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 ( )

iv. Such information as the Department may require to determine the compliance status of the emissions unit; and ( )

d. All original compliance certifications must be submitted to the Department and a copy of all compliance certifications submitted to the EPA; ( )

12. Permit Conditions Regarding Acid Rain Allowances. Include all requirements for acid rain allowances. ( )

a. A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds. ( )

b. No limit is placed on the number of allowances held by the source and no permit revisions are 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. ( )

c. The source may not use allowances as a defense to noncompliance with any other applicable requirement. ( )

d. Any such allowance must be accounted for according to the procedures established in 40 CFR Part 72 and 40 CFR Part 73; ( )

13. Permit Duration. State that it is effective for a fixed term of five (5) years; ( )

14. Other Specific Requirements. Include any terms or conditions determined by the Department to be necessary for approval of the Tier I operating permit; and ( )

15. General Requirements. Contain provisions stating: ( )

a. The permittee must 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; ( )

b. It is not 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; ( )

c. This permit may be revised, revoked, reopened and reissued, or terminated for cause; ( )

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; ( )

e. This permit does not convey any property rights of any sort, or any exclusive privilege; ( )

f. The permittee must furnish all information requested by the Department, within a reasonable time, that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing or terminating the permit or to determine compliance with the permit; ( )

g. Upon request, the permittee must furnish to the Department copies of records required to be kept by this permit; ( )

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 is not affected thereby; ( )

i. The permittee must comply with Sections 380 through 386 as applicable; ( )

j. Unless specifically identified as a "State Only" provision, all terms and conditions in the permit, including any terms and conditions designed to limit a source's potential to emit, are enforceable: ( )

i. By the Department in accordance with State law; and ( )

ii. By the United States or any other person in accordance with Federal law; ( )

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; ( )

l. Upon presentation of credentials, the permittee must allow the Department or an authorized representative of the Department to do the following: ( )

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; ( )

ii. Have access to and copy, at reasonable times, any records that are kept under the conditions of this permit; ( )

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 ( )

iv. Sample or monitor at reasonable times substances or parameters for the purpose of determining or ensuring compliance with this permit or applicable requirements; ( )

m. Nothing in this permit alters or affects the following: ( )

i. Any administrative authority or judicial remedy available to prevent or terminate emergencies or imminent and substantial dangers; ( )

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; ( )

iii. The applicable requirements of the acid rain program, consistent with 42 U.S.C. Section 7651g(a); and ( )

iv. The owner or operator's duty to provide information; ( )

n. The owner or operator of a Tier I source must pay registration fees to the Department in accordance with Sections 387 through 397, which are hereby incorporated by reference; ( )

o. All documents submitted to the Department must be certified in accordance with Section 123; ( )

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 remains in effect until the renewal permit has been issued or denied; and ( )

q. The permittee must 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 must be submitted in accordance with the requirements of Sections 130 through 136. For all other deviations, the report must be submitted in accordance with Subsection 322.08.c. unless the permit specifies another time frame. The reports must describe the probable cause of such deviations and any corrective actions or preventative measures taken. ( )

323. -- 324. (RESERVED)

325. ADDITIONAL CONTENTS OF TIER I OPERATING PERMITS -- PERMIT SHIELD.
Each Tier I operating permit will include provisions stating: ( )

01. General Permit Shield. Compliance with the terms and conditions of the Tier I operating permit, including those applicable to all alternative operating scenarios and trading scenarios, will be deemed compliance with all of the following: ( )

a. Applicable requirements as of the date of permit issuance that are specifically identified in the Tier I operating permit and have a corresponding term or condition in the Tier I operating permit. ( )

b. Non-applicable requirements. For a requirement to be a non-applicable requirement, all of the following criteria must be met: ( )

i. The permittee must have provided the information required by Subsection 314.08.b. in the application. ( )

ii. The requirement must be specifically identified in the Tier I operating permit as a non-applicable requirement. ( )

iii. The requirement must have been determined by the Department, in writing and in acting on the permit application or revision, to not be applicable to the Tier I source. ( )

iv. Tier I operating permit must include the Department's determination or a concise summary thereof. ( )

02. Limitation on Permit Shield. Permit revisions and other actions authorized by Sections 300 through 386 may eliminate, modify or suspend the permit shield. ( )

326. -- 331. (RESERVED)

332. EMERGENCY AS AN AFFIRMATIVE DEFENSE REGARDING EXCESS EMISSIONS.

01. General. An emergency, defined as any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including 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, constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitation if the conditions of Subsection 332.02 are met. An emergency will not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. ( )

02. Demonstration of Emergency. The affirmative defense of emergency must be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that: ( )

a. An emergency occurred and that the permittee can identify the cause(s) of the emergency; ( )

b. The permitted facility was at the time being properly operated; ( )

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 ( )

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.q. ( )

03. Burden of Proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof. ( )

04. Applicability. Section 332 is in addition to any emergency or upset provision contained in any applicable requirement. ( )

333. -- 334. (RESERVED)

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. ( )

02. Contents of General Tier I Operating Permits. Each general Tier I operating permit will: ( )

a. Include all terms and conditions identified in Sections 322 and 325. ( )

b. Include specific criteria by which sources may qualify for coverage under the general Tier I operating permit; and ( )

c. May provide for applications that 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. ( )

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: ( )

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 ( )

b. Complying with the specific application requirements, if any, provided in the general Tier I operating permit. ( )

04. Procedures for Issuing Authorizations to Operate. Without repeating the public participation procedures required under Section 364, the Department will 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. ( )

05. Review of Authorizations to Operate. The issuance of an authorization to operate is a final agency action for purposes of administrative and judicial review of the authorization. The general Tier I operating permit is not subject to administrative or judicial review upon the issuance of an authorization to operate. ( )

06. Phase II Sources. General Tier I operating permits are not authorized for Phase II sources under the acid rain program unless otherwise provided in 40 CFR Part 72. ( )

336. TIER I OPERATING PERMITS FOR TIER I PORTABLE SOURCES.

01. Portable Tier I Source Permit Issuance. ( )

a. The Department may issue a single Tier I operating permit authorizing emissions from similar operations of a portable Tier I source by the owner or operator at multiple temporary locations. ( )

b. The operation must be temporary and involve at least one (1) change of location for the portable Tier I source during the term of the Tier I operating permit. ( )

02. Phase II Sources. No Phase II source may be permitted as a portable Tier I source. ( )

03. Portable Tier I Source Permit Content. Tier I operating permits for portable Tier I sources will include the following: ( )

a. Terms and conditions that will ensure compliance with all applicable requirements at all authorized locations; ( )

b. Requirements that the owner or operator notify the Department at least ten (10) days in advance of each change in location in accordance with Section 500; and ( )

c. All terms and conditions identified in Sections 322,325, and 332. ( )

337. -- 359. (RESERVED)

360. STANDARD PROCESSING OF TIER I OPERATING PERMIT APPLICATIONS.
Sections 360 through 369 establish standard procedures and requirements for processing Tier I operating permits. ( )

361. COMPLETENESS OF APPLICATIONS.

01. Criteria. Except as otherwise provided by these rules, the application must comply with Section 314 including that the information must be in sufficient detail. ( )

02. Timelines for Completeness Determinations. The Department will send written notice to the applicant of whether the application is complete within sixty (60) days of receiving the application and, if the Department fails to send the written notice, the application will be deemed complete. ( )

03. Effects of Completeness Determination. ( )

a. The submittal of a complete application activates the application shield provided by Subsection 361.02. ( )

b. The submittal of a complete Tier I operating permit application does not affect the permit to

construct requirements of Sections 200 through 225 or 42 U.S.C. Sections 7401 through 7515. ( )

c. The timelines for final agency action provided in Subsections 367.02 and 367.03 begin on the date of the completeness determination. ( )

362. STATEMENT OF BASIS FOR TIER I OPERATING PERMITS.

01. Statement of Basis for Draft Permit. As part of its review of the Tier I operating permit application, the Department will prepare a statement of basis that sets forth the legal and factual basis for the draft Tier I operating permit terms and conditions (including references to the applicable statutory or regulatory provisions) or the draft denial. ( )

02. Revised Statement of Basis for Proposed Permit. If the Department revises its analysis, its conclusions or the terms or conditions of the Tier I operating permit in response to public comment, the Department may revise the statement of basis for the proposed permit or the proposed denial. ( )

03. Release of Statement of Basis. The statement of basis will be made available to the public in accordance with Section 364 and sent to the EPA with the proposed Tier I operating permit or proposed denial. ( )

363. PREPARATION OF DRAFT PERMIT OR DRAFT DENIAL.
Except as otherwise provided in these rules, the Department will prepare a draft permit or draft denial as promptly as practicable or one hundred twenty (120) days before the deadline for final action, whichever is earlier. ( )

364. PUBLIC NOTICES, COMMENTS AND HEARINGS.

01. Generally. Except as otherwise provided in these rules, all Tier I operating permit proceedings will provide for public notice and public comment, including offering an opportunity for a hearing, on a draft permit or on a draft denial. ( )

02. Public Comment Package. A public comment package including the draft permit or draft denial, the technical memorandum and the application will be prepared and distributed to appropriate public locations, the applicant and affected States. ( )

03. Giving Notice. Notice will be given: by publication in a newspaper of general circulation in the area where the Tier I source is located or in a State publication designed to give general public notice; by mailing the notice to persons on a mailing list developed by the Department, including those who request in writing to be on the list; by mailing the notice to all affected States; and by other means if necessary to ensure adequate notice to the affected public. ( )

04. Content of the Notice. The notice will identify the affected facility; provide the name and address of the permittee; provide the name and address of the Department processing the application; identify the draft permit action; identify the emissions change if the permit action is a permit revision or reopening; provide the locations where the public may locate a copy of the public comment package; provide the name, address, email address, and telephone number of a person from whom interested persons may obtain additional information that is relevant to the permit decision by filing a written public documents request and paying any costs; provide a brief description of the comment procedures, including the deadline for comments and the name and address of the person to whom written comments must be delivered; and state the time and place of any hearing that has been scheduled or provide information regarding how a person may request a hearing. ( )

05. Public Comment Procedures. ( )

a. The Department will provide at least thirty (30) days for public comment. ( )

b. The Department will give notice of any public hearing at least thirty (30) days in advance of the hearing. ( )

c. The public hearing, if any, is an informal meeting, conducted by a hearing officer designated by the Department and transcribed. Written comments or supporting documents may be submitted during the hearing. ( )

d. The public comments and additional information received during the comment period are available to the public upon the filing of a written public documents request and the payment of any costs. ( )

365. PREPARATION OF PROPOSED PERMIT OR PROPOSED DENIAL.

01. Timeline. Except as otherwise provided by these rules, the Department will prepare a proposed permit or proposed denial within thirty (30) days after the close of the public comment period, unless the Department determines that additional time is required to evaluate comments and information received. ( )

02. Availability. The proposed permit or proposed denial will be available to the public upon the filing a written public documents request and the payment of any costs. ( )

03. Notice to Affected States. If the Department refuses to accept all recommendations that an affected State submitted during the public comment period, the Department will send a copy of the notice sent to EPA in accordance with Subsection 366.01.d. to the affected State that submitted the recommendation. ( )

366. EPA REVIEW PROCEDURES.

01. Submittal of Proposal to EPA. Except as otherwise provided in these rules and unless EPA waives its opportunity to review a proposed permit, the Department will transmit the following to EPA: ( )

a. The proposed permit or proposed denial. ( )

b. The statement of basis, as revised if appropriate. ( )

c. The application including all supplements and corrections submitted by the applicant, unless the applicant has submitted the information under a claim of confidentiality or unless the Department has entered an agreement with EPA to submit only a summary form and relevant portions of the permit application. ( )

d. Notice of any refusal by the Department to accept all recommendations for the proposal that any affected State submitted during the public comment period. The notice will include the Department's reasons for not accepting any such recommendation. The Department is not required to accept recommendations that are not based on applicable requirements. ( )

02. Opportunity for EPA Objection. ( )

a. EPA may submit to the Department a written objection to the proposal within forty-five (45) days of receipt of the transmittal identified in Subsection 366.01. ( )

b. The written objection must state the EPA's reasons for the objection and provide the terms and conditions that the Tier I operating permit must include to respond to the objection or state that the permit must be denied. ( )

c. EPA must provide a copy of the written objection to the applicant. ( )

03. Response to EPA Objections. Within ninety (90) days of receiving a written objection from EPA, the Department will prepare a revised proposal and submit it to EPA in accordance with Subsection 366.01. If EPA determines that the revised proposal is objectionable, the Department will review the permit action taken by EPA and take a comparable final permit action in accordance with Section 367. ( )

04. Public Petitions to EPA. ( )

a. If the EPA does not object in writing under Subsection 366.02, any person may petition the EPA

within sixty (60) days after the expiration of the EPA's forty-five (45) day review period to make such objection. ( )

b. Any such petition must be based only on objections to the draft permit or draft denial that were raised with specificity during the public comment period provided for in Section 364 unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. ( )

c. If the EPA objects to the proposal in accordance with Subsection 366.02 as a result of a petition filed under Subsections 366.04.a. and 366.04.b., the Department will: ( )

i. Not issue a permit action until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a Tier I operating permit or its requirements pending EPA's review of the petition and Department review of the objection if the Tier I operating permit was issued by the Department after the end of the forty-five (45) day review period and prior to an EPA objection initiated by a petition. ( )

ii. Process the objection in accordance with Subsection 366.03. ( )

367. ACTION ON APPLICATION.

01. Issuance Conditions. Except as otherwise provided by these rules, a Tier I operating permit, or any portion thereof, may be issued only if all of the following conditions have been met: ( )

a. The owner or operator has submitted a complete application in accordance with Section 361. ( )

b. The public has been provided notice and opportunities for comment and a hearing in accordance with Section 364. ( )

c. Affected States have been provided notice in accordance with Section 364 and Subsection 365.03. ( )

d. The terms and conditions of the Tier I operating permit comply with Sections 321 through 336 including providing for compliance with all applicable requirements. ( )

e. The EPA has been provided with the proposal and an opportunity to object and the Department has responded as required by Section 366. ( )

02. Copy to EPA. The Department will send a copy of the final Tier I operating permit to EPA. ( )

03. Original to Permittee. The Department will send the original Tier I operating permit to the permittee. ( )

368. EXPIRATION OF PRECEDING PERMITS.

If a timely and complete Tier I permit application is received by the Department and is not acted upon in a timely manner as prescribed by these rules, the permit to construct, Tier I operating permit or Tier II operating permit, if any, that has been previously issued to the owner or operator of the Tier I source by the Department or EPA continues in full force until the Department has completed action of the permit application. No Tier I operating permit will be considered to have expired due solely to the Department's inaction on a timely Tier I operating permit application. ( )

369. TIER I OPERATING PERMIT RENEWAL.

01. Renewal Procedures. Tier I operating permits being renewed are subject to the same procedural requirements, including those for public participation, including affected State review, and EPA review, that apply to initial Tier I operating permit issuance. ( )

02. Expiration and Renewal Application Shield. Tier I operating permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted. ( )

370. -- 379. (RESERVED)

380. CHANGES TO TIER I OPERATING PERMITS.

01. Applicability. Sections 380 through 397 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 227. ( )

02. Changes Requiring Permit Revisions. Sections 381 through 383 establish procedures and requirements for Tier I operating permit revisions. A permit revision is required for changes that are not addressed or prohibited by the Tier I operating permit if such changes are subject to any requirements under Title IV of the Clean Air Act or are modifications under any provision of Title I of the Clean Air Act. ( )

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). ( )

04. Reopening. Section 386 establishes procedures for reopening the permit for cause by the Department, EPA, or the permittee. ( )

05. Acid Rain. Changes regulated under Title IV of the Clean Air Act, 42 U.S.C. Sections 7651 through 7651o, are governed by regulations promulgated under Title IV of the Act. ( )

381. ADMINISTRATIVE PERMIT AMENDMENTS.

01. Criteria. An administrative permit amendment is a permit revision that: ( )

a. Corrects typographical errors; ( )

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; ( )

c. Requires more frequent monitoring or reporting by the permittee; ( )

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; ( )

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.c.; or ( )

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. ( )

02. Administrative Permit Amendment Application Procedures. ( )

a. If initiated by the permittee, the permittee must submit a request to the Department that: ( )

i. States at the beginning of the request that it is a "REQUEST FOR ADMINISTRATIVE PERMIT AMENDMENT." ( )

ii. Describes the proposed administrative permit amendment including any permit to construct to be incorporated; ( )

iii. States the date on which the proposed administrative amendment will occur at the facility; ( )

iv. Identifies any Tier I operating permit term or condition that is no longer applicable as a result of the change; and ( )

v. Identifies any applicable requirement that would apply to the Tier I source as a result of the change. ( )

b. If initiated by the Department, the Department will 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. ( )

c. The Department will, 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. The Department will submit a copy of the revised permit, or an addendum, to the EPA and send the original to the permittee. ( )

03. Implementation Procedures. ( )

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. ( )

b. If the permittee obtains a permit to construct under Subsection 209.05.c., 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. ( )

04. Permit Shield. Upon final action by the Department, the permit shield described in Section 325 extends only to administrative permit amendments identified in Subsection 381.01.e. ( )

382. SIGNIFICANT PERMIT MODIFICATION.

01. Criteria. Significant modification procedures are used for applications requesting permit revisions that do not qualify as minor permit modifications or as administrative amendments. Nothing herein will 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: ( )

a. Violate an existing Tier I permit term or condition derived from an applicable requirement; ( )

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 is considered significant; ( )

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; ( )

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; ( )

e. Constitute a modification under any provision of Title I of the Clean Air Act; or ( )

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. ( )

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 must: ( )

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"; ( )

b. Meet the standard application requirements of Sections 314 and 315; ( )

c. Provide a summary sheet; ( )

i. Describing the proposed significant permit modification; ( )

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; ( )

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 ( )

iv. Identifying new applicable requirement resulting from the change. ( )

d. Significant permit modifications will 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). ( )

e. The Department will process the majority of significant permit modifications within nine (9) months of receiving a complete application. The Department will determine which significant permit modification applications will be processed within nine (9) months. ( )

03. Implementation Procedures. The permittee must comply with Sections 200 through 223 as applicable, including Subsection 209.05 governing permit to construct procedures for Tier I sources. ( )

04. Permit Shield. Upon final action by the Department, the permit shield described in Section 325 will extend to significant permit modifications. ( )

383. MINOR PERMIT MODIFICATION.

01. Criteria. ( )

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. ( )

b. Any other permit modification that is not required to be processed as a significant permit

modification under Section 382. ( )

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; ( )

ii. Twenty percent (20%) of the major facility criteria in Section 008; or ( )

iii. Five (5) tons per year. ( )

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 must: ( )

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; ( )

i. Describing the proposed minor permit modification; ( )

ii. Stating the date on which the proposed minor permit modification will occur at the facility; ( )

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; ( )

iv. Identifying any Tier I operating permit term or condition that will no longer be applicable as a result of the minor permit modification; ( )

v. Identifying any new applicable requirement that is applicable to the Tier I source as a result of the minor permit modification; ( )

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 ( )

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; ( )

b. Include completed forms for the Department to use to notify the EPA and affected States as required under Sections 364 and 366; and ( )

c. Include the applicant's suggested draft Tier I permit with the minor permit modification. ( )

03. EPA and Affected State Notification Procedures. ( )

a. Within five (5) working days of receipt of a complete minor permit modification application, the Department will 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 will occur simultaneously. ( )

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. ( )

c. The Department will 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. ( )

d. 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. ( )

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 will take one (1) of the following actions: ( )

i. Issue the minor permit modification as proposed; ( )

ii. Deny the minor permit modification application; ( )

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 ( )

iv. Revise the proposed minor permit modification, transmit the revised proposal to the EPA in accordance with Section 366, and notify the permittee. ( )

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 will 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. ( )

04. Implementation Procedures. ( )

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. ( )

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. ( )

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. ( )

05. Permit Shield. The permit shield described in Section 325 does not apply to any minor permit modification. ( )

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). ( )

a. Changes authorized are changes that: ( )

i. Are Section 502(b)(10) changes; ( )

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 ( )

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. ( )

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. ( )

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 will attach the notification to their copy of the Tier I operating permit. ( )

a. For each such change, the written notification must: ( )

i. State at the beginning of the notification "NOTIFICATION OF SECTION 502(b)(10) CHANGE" or "NOTIFICATION OF EMISSION TRADE"; ( )

ii. Describe the proposed change; ( )

iii. Provide the date on which the proposed change will occur; ( )

iv. Describe and quantify any expected change in emissions including identification of any new regulated air pollutant(s) that will be emitted; ( )

v. Identify any permit term or condition that is no longer applicable as a result of the change; ( )

vi. Specifically identify and describe the emergency, if any; and ( )

vii. Identify any new applicable requirement that would apply to the Tier I source as a result of the change. ( )

b. For changes described in Subsection 384.01.a.ii., the written notification must also include: ( )

i. Identification of the provisions in the SIP that provide for the emissions trade; ( )

ii. All of the information required by the provision in the SIP authorizing the emissions trade; ( )

iii. Specific identification of the provisions in the SIP with which the permittee will comply; and ( )

iv. The pollutants subject to the trade. ( )

c. For changes described in Subsection 384.01.a.iii., the written notification must also describe how the change will comply with the terms and conditions of the permit. ( )

03. Permit Shield. The permit shield described in Section 325 only extends to changes made in accordance with Subsection 384.01.a.iii. ( )

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. ( )

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. ( )

a. The written notification provided to the Department and EPA must: ( )

i. State at the beginning of the notification "NOTIFICATION OF OFF-PERMIT CHANGE"; ( )

ii. Describe the off-permit change; ( )

iii. State the date on which the off-permit change will occur or has occurred; ( )

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 ( )

v. Identify any new applicable requirement that is applicable to the Tier I source as a result of the off-permit change. ( )

b. The permittee must 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. ( )

03. Permit Shield Applicability. The permit shield described in Section 325 does not apply to any off-permit change. ( )

386. REOPENING FOR CAUSE.
The Department will reopen a Tier I permit if cause exists. ( )

01. Criteria. Cause for reopening exists under any of the following circumstances: ( )

a. Additional applicable requirements become applicable to a major Tier I source with a remaining permit term of three (3) or more years; provided that no such reopening is required if the original effective date of the applicable requirement is later than the date on which the Tier I operating permit is due to expire and the original Tier I operating permit or any of its terms and conditions has not been extended pursuant to Section 368; provided further that the permittee must comply with the additional applicable requirement no later than the effective date; ( )

b. Whenever additional applicable requirements become applicable to an affected source, as defined for the purposes of the acid rain program; ( )

c. The Department or EPA determines that the Tier I operating permit contains a material mistake or inaccurate statements were used or considered in establishing the emissions standards or other terms or conditions of the Tier I operating permit; or ( )

d. The Department or EPA determines that the Tier I operating permit does not ensure compliance with the applicable requirements. ( )

02. Procedures for Reopenings. ( )

a. The Department will follow the same procedures for reopening as they apply to initial permit issuance and will affect only those parts of the permit for which cause to reopen exists. Reopenings will be made as expeditiously as practicable in accordance with Sections 360 through 379. ( )

b. The Department will notify the permittee in writing of reopening and provide a brief summary of the reason for the reopening at least thirty (30) days prior to the reopening. ( )

c. The EPA may initiate reopenings for circumstances listed in Subsections 386.01.a. through 386.01.d. by providing written notification to the Department and the permittee. ( )

i. The Department will within ninety (90) days after receipt of notification from EPA, forward to EPA a proposed determination of termination, revocation, revision, or revocation and reissuance, as appropriate. The Administrator may extend the ninety (90) day period for an additional ninety (90) days if EPA finds that a new or revised permit application is necessary or that the Department must require the permittee to submit additional information. ( )

ii. The EPA will review the proposed determination from the Department within ninety (90) days of receipt. ( )

iii. The Department will have ninety (90) days from receipt of an EPA objection to resolve any EPA objection and to terminate, modify, or revoke and reissue the permit. ( )

iv. If the Department fails to submit a proposed determination or fails to resolve any EPA objection, the EPA may terminate, modify, revoke and reissue the permit after taking the following actions: ( )

(1) Providing at least thirty (30) days' notice to the permittee in writing of the reason for such action, and ( )

(2) Providing the permittee an opportunity for comment on the EPA's proposed action and an opportunity for a hearing. ( )

387. TIER I REGISTRATION FEE.
Sections 387 through 397 set the procedures for the annual registration and fee assessment for Tier I sources, including facilities that obtained air quality permits that limited potential emissions below Tier I source levels during the previous year. Any person owning or operating a Tier I source during the previous calendar year must by April 1 of each year, register with the Department and submit the following information *described* at http://www.deq.idaho.gov: *( )*

01. Facility Information. The name, address, telephone number and location of the facility; ( )

02. Owner/Operator Information. The name, address and telephone numbers of the owners and operators; ( )

03. Facility Emission Units. The number and type of emission units present at the facility or the Tier I permit number for the facility; and ( )

04. Pollutant Registration. The actual emissions from the previous calendar year for oxides of sulfur (SOx), oxides of nitrogen (NOx), particulate matter (PM10), and volatile organic compounds (VOC) calculated using methods to include, but not limited to, continuous emissions monitoring (CEMS), certified source tests, material balances (mass-balance), state/industry emission factors, or AP-42 emission factors applied to throughput, actual operating hours, production rates, in-place control equipment, or the types of materials processed, stored, or combusted. ( )

388. – 389. (RESERVED)

390. TIER I ANNUAL FEE.
A Tier I annual fee includes the following three components: ( )

01. Fixed Annual Fee. A fixed annual fee for Tier I sources emitting regulated air pollutants listed in Subsection 387.04 as follows:

Emissions (tons/year)	Fixed Annual Fee
4500 and above	$70,785
3000 – 4499	$47,190
1000 – 2999	$37,540
500 – 999	$18,235
200 – 499	$11,800
0 – 199	$5,900

( )

02. Fee Based on Presumptive Minimum. A fee based on the 40 CFR Part 70 presumptive minimum (https://www.epa.gov/title-v-operating-permits/permit-fees) is calculated by multiplying the presumptive minimum fee in effect on April 1 of each year by the sum of all air pollutant emissions listed in Subsection 387.04, but not to exceed the following maximum values:

Emissions (tons/year)	Maximum Fee
4500 and above	$181,000
3000 – 4499	$91,000
1000 – 2999	$44,400
500 – 999	$31,500
200 – 499	$13,500
0 – 199	$4,550

( )

03. Fee-for-Service. A fee for service that the Department will assess based on actual time expended and expenses incurred by the Department in the previous calendar year for 40 CFR Part 70 program activities in an amount not to exceed forty five thousand dollars ($45,000) per year. ( )

391. (RESERVED)

392. REGISTRATION FEE ASSESSMENT.
All applicable facilities must pay to the Department an annual registration fee based on the information supplied by the registrant using the methods described in Section 390. If the facility fails to submit registration information, the Department will calculate the fee and assess both the fee and the costs of calculating the fee. No later than May 15 of each year, the Department will send to each registrant an assessment of the annual fee. ( )

393. PAYMENT OF TIER I REGISTRATION FEE.

The fee must be paid to and received by the Department no later than July 1 of each year. Information for making payments is available at http://www.deq.idaho.gov. ( )

394. EFFECT OF DELINQUENCY ON APPLICATIONS.
No permit to construct or operate will be processed by the Department for any facility or person having Tier I operating permit fees delinquent in full or in part. ( )

395.—396. (RESERVED)

397. LUMP SUM PAYMENTS OF REGISTRATION FEES.

01. Agreement. The Department may enter an agreement with any person for the lump sum payment of all, or any addition to, the registration fees in Section 390. ( )

02. Minimum Amount. The minimum amount for any lump sum agreement is three hundred thousand dollars ($300,000). ( )

03. Payment Waiver. Upon the execution and full performance of the agreement by the person, the Department will waive the payment requirements of Section 390. All other provisions of Sections 387 through 397 remain applicable to the person. ( )

398. -- 399. (RESERVED)

400. PROCEDURES AND REQUIREMENTS FOR TIER II OPERATING PERMITS.
Sections 400 through 409 establish uniform procedures for the issuance of "Tier II Operating Permits." ( )

401. TIER II OPERATING PERMIT.

01. Optional Tier II Operating Permits. The owner or operator of any stationary source or facility not subject to (or wishes to accept limitations on the facility's potential to emit so as to not be subject to) Sections 300 through 399 may apply to the Department for an operating permit to: ( )

a. Authorize the use of an emission offset pursuant to Sections 204.02.b. or 206; ( )

b. 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; ( )

c. Authorize the use of a potential to emit limitation to exempt the facility from Tier I permitting requirements; and ( )

d. Bank an emission reduction credit pursuant to Section 461. ( )

02. Required Tier II Operating Permits. ( )

a. A Tier II operating permit is required for any stationary source or facility that has annual actual mercury emissions in excess of sixty-two (62) pounds. Fugitive emissions are not included in a determination of the actual mercury emissions. The owner or operator of the stationary source or facility must submit a Tier II permit application for review and approval by the Department, no later than twelve (12) months after becoming subject to Subsection 401.02.a., that includes an MBACT analysis for all sources that emit mercury. A determination of applicability under Subsection 401.02 will be based upon best available information. An MBACT analysis for review and approval by the Department must be included in a Tier II renewal application for any mercury emitting source not otherwise subject to MBACT. ( )

b. Stationary sources within a source category subject to 40 CFR Part 63 are exempt from the requirements of Subsection 401.02.a. ( )

03. Tier II Operating Permits Required by the Department. The Department may require or revise a Tier II operating permit for any stationary source or facility whenever the Department determines that: ( )

a. Emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increment; or ( )

b. Specific emission standards, or requirements on operation or maintenance are necessary to ensure compliance with any applicable emission standard or rule. ( )

04. Tier II Operating Permits Establishing a Facility Emissions Cap. The owner or operator of any stationary source or facility may request a Tier II operating permit establishing a Facility Emissions Cap (FEC) pursuant to Sections 175 through 181. ( )

402. APPLICATION PROCEDURES.
Application for a Tier II operating permit must be made using forms furnished by the Department, or by other means approved by the Department. The application must be certified by the responsible official and be accompanied by all information necessary to perform any analysis or make any determination required under Sections 400 through 410. ( )

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. ( )

02. Additional Specific Information. ( )

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 that 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). ( )

b. For 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. ( )

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. ( )

03. Estimates of Ambient Concentrations. All estimates of ambient concentrations must be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51 Appendix W (Guideline on Air Quality Models). Where an air quality model specified in the "Guideline on Air Quality Models" is inappropriate, the model may be modified or another model substituted, subject to written approval of the EPA Administrator and public comment pursuant to Subsection 404.01.c. ( )

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 409 shall be furnished upon request. ( )

403. PERMIT REQUIREMENTS FOR TIER II SOURCES.
No Tier II operating permit will be granted unless the applicant shows to the satisfaction of the Department that: ( )

01. Emission Standards. The stationary source would comply with all applicable local, state or federal emission standards. ( )

02. NAAQS. The stationary source would not cause or significantly contribute to a violation of any ambient air quality standard. ( )

404. PROCEDURE FOR ISSUING PERMITS.

01. General Procedures. General procedures for Tier II operating permits. ( )

a. Within thirty (30) days after receipt of the application for a Tier II operating permit, the Department will determine whether the application is complete or whether more information must be submitted and will notify the applicant of its findings in writing. ( )

b. Within sixty (60) days after the application is determined to be complete the Department will: ( )

i. Notify the applicant in writing of the approval or denial of the application if an opportunity for public comment is not required pursuant to Subsection 404.01.c. The Department will set forth reasons for any denial; or ( )

ii. Issue a proposed approval or proposed denial. ( )

c. An opportunity for public comment will be provided on an application for any Tier II operating permit pursuant to Subsection 401.01 and any other application that the Department determines an opportunity for public comment should be provided. ( )

i. The availability of such materials will 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. ( )

ii. A copy of such notice will be sent to the applicant and to appropriate federal, state and local agencies. ( )

iii. There will 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. ( )

iv. 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 Department deems that additional time is required to evaluate comments and information received, the Department will notify the applicant in writing of approval or denial of the permit. The Department will set forth the reasons for any denial. ( )

v. All comments and additional information received during the comment period, together with the Department's final determination, will be made available to the public at the same location as the preliminary determination. ( )

d. A copy of each proposed and final permit will be sent to EPA. ( )

02. Specific Procedures. Procedures for Tier II operating permits. ( )

a. The Department will 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 will contain a copy of the proposed permit in draft form stating the proposed emission standards and any required action, with corresponding dates, that must be taken by the proposed permittee in order to achieve or maintain compliance with the proposed Tier II operating permit. ( )

b. The application and the Department's proposed Tier II operating permit will 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 will 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 will be sent to the applicant. There will be a thirty (30) day period after publication for comment on the Department's proposed Tier II operating permit. Such comment must be made in writing to the Department. ( )

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 with the Department within ten (10) days of receipt of the notification, or if the Department determines that there is good cause to hold a hearing. ( )

d. After consideration of comments and any additional information submitted during the comment period or at any public hearing, the Department will 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 Department may adopt the entire Tier II operating permit as originally proposed or any part or modification thereof. ( )

e. All comments and additional information received during the comment period, together with the Department's final permit, will be made available to the public at the same location as the proposed Tier II operating permit. ( )

04. Permit Revision or Renewal. The Department 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 409. Revised permits will be issued pursuant to procedures for issuing permits (Section 404), except that the requirements of Subsection 404.01.c. only apply if the permit revision results in an increase in allowable emissions or if deemed appropriate by the Department. 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. only apply if the permit revision results in an increase in allowable emissions or if deemed appropriate by the Department. 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. The permittee must submit a complete application to the Department for a renewal of the terms and conditions establishing the Tier II operating permit at least six (6) months before, but no earlier than eighteen (18) months before, the expiration date of the existing permit. To ensure that the term of the permit does not expire before the terms and conditions are renewed, the permittee is encouraged to submit the application nine (9) months prior to expiration. ( )

05. Transfer of Tier II Permit. ( )

a. Transfers by Revision. A Tier II permit may be transferred to a new owner or operator in accordance with Subsection 404.04. ( )

b. Automatic Transfers. Any Tier II permit, with or without transfer prohibition language, may be automatically transferred if: ( )

i. The current permittee notifies the Department at least thirty (30) days in advance of the proposed transfer date; ( )

ii. The notice provides written documentation signed by the current and proposed permittees containing a date for transfer of permit responsibility, designation of the proposed permittee's responsible official, and certification that the proposed permittee has reviewed and intends to operate in accordance with the permit terms and conditions; and ( )

iii. The Department does not notify the current permittee and the proposed permittee within thirty (30) days of receipt of the notice of the Department's determination that the permit must be revised pursuant to Subsection 404.04. If the Department does not issue such notice, the transfer is effective on the date provided in the notice described in Subsection 404.05.b.ii. ( )

405. CONDITIONS FOR TIER II OPERATING PERMITS.

01. Reasonable Conditions. The Department may impose any reasonable conditions upon an approval, including conditions requiring the stationary source or facility to be provided with: ( )

a. Sampling ports of a size, number, and location as the Department may require; ( )

b. Safe access to each port; ( )

c. Instrumentation to monitor and record emissions data; ( )

d. Instrumentation for ambient monitoring to determine the effect emissions from the stationary source or facility may have, or are having, on the air quality in any area affected by the stationary source or facility; and ( )

e. Any other sampling and testing facilities as may be deemed reasonably necessary. ( )

02. Performance Tests. Any performance tests required by the permit must be performed in accordance with methods and under operating conditions approved by the Department. The owner or operator must furnish to the Department a written report of the results of such performance test. ( )

a. Such test is at the expense of the owner or operator. ( )

b. The Department may monitor such test and may also conduct performance tests. ( )

c. The owner or operator of a stationary source or facility must provide the Department fifteen (15) days prior notice of the performance test to afford the Department the opportunity to have an observer present. ( )

03. Permit Term. Tier II operating permits will be issued for a period not to exceed five (5) years. This five (5) year operating permit restriction does not apply to the provisions contained in Section 461.02. ( )

406. (RESERVED)

407. TIER II OPERATING PERMIT PROCESSING FEE.

01. Tier II Operating Permit Processing Fee. A Tier II operating permit processing fee, calculated by the Department pursuant to the categories provided in the following table, must be paid to the Department by the person receiving a Tier II permit or permit renewal. The fee calculation will not include fugitive emissions.

TIER II OPERATING PERMIT CATEGORY	FEE
General permit, no facility specific requirements (Defined as a source category specific permit for which the Department has developed standard emission limitations, operating requirements, monitoring and recordkeeping requirements, and that require minimal engineering analysis.)	$500
Stationary sources or facilities with permitted emissions of less than one (1) ton per year	$1,250
Stationary sources or facilities with permitted emissions of one (1) to less than ten (10) tons per year	$2,500
Stationary sources or facilities with permitted emissions of ten (10) to less than one hundred (100) tons per year	$5,000
Stationary sources or facilities with permitted emissions of one hundred (100) tons or more per year	$10,000
Synthetic minor stationary sources with permitted emissions below a major threshold level	$10,000

( )

02. Tier II Operating Permit Processing Fee Not Required. If the Department determines no other review or analysis is required, the Tier II operating permit processing fee is not required to be submitted when: ( )

a. A permit to construct issued within the last five (5) years is rolled into a Tier II permit; ( )

b. A change to correct typographical errors is requested; ( )

c. A change in the name or ownership of the holder of a Tier II operating permit is requested; or ( )

d. A synthetic minor permit is issued and the Department's processing costs can be charged against fees collected from the person receiving the permit under Title V of the federal Clean Air Act amendments of 1990.

( )

408. PAYMENT OF TIER II OPERATING PERMIT PROCESSING FEE.

01. Fee Submittal. The Tier II operating permit processing fee is payable upon receipt of an assessment sent, along with the final permit or permit renewal, to the person receiving a permit or permit renewal by the Department. Information for making payments is available at http://www.deq.idaho.gov. ( )

02. Delinquency. Failure to submit a Tier II operating permit processing fee within forty-five (45) days of receipt of an assessment by the Department will result in a monthly accrual of interest in the amount of twelve percent (12%) per annum on the outstanding balance until the fee is paid in full. ( )

409. RECEIPT AND USAGE OF FEES.
Tier II operating permit processing fee and delinquency interest receipts will be deposited by the Department into a stationary source permit account. Monies from this account are used solely toward technical, legal and administrative support of the Department's Permit to Construct and Tier II permit programs and will not be used for those activities supported by the fund created for implementing the operating permit program required under Title V of the federal Clean Air Act amendments of 1990. ( )

410. -- 459. (RESERVED)

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: ( )

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 that exceed the allowable emissions of the stationary source(s) or emission unit(s). ( )

02. Timing of Emission Reduction. In an attainment or unclassifiable area, any emission reduction that occurs prior to the minor source baseline date must have been banked with the Department prior to the minor source baseline date to be credited; in a nonattainment area the emission reduction must occur after the base year of any control strategy for the particular air pollutant. ( )

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. ( )

04. Permit Issuance. A permit to construct, Tier I operating permit or Tier II operating permit will be issued to establish a new emission standard for the facility, or restrict 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. ( )

05. Imposed Reductions. Emission reductions imposed by local, state or federal regulations or permits will not be allowed for emission reduction credits. ( )

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 will 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. ( )

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 of Section 460. ( )

02. Banking Period. Emission reduction credits may be banked with the Department. The banked emission reduction credits may be used for offsets, netting in accordance with the definition of net emissions increase at Section 007, 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. ( )

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" that will identify the owner of the credits, quantify the credited emission reduction and describe the characteristics of the emissions that were reduced and emissions unit(s) that previously emitted them. ( )

04. Adjustment by Department. If at any time the Department, or the owner or operator of a facility that 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. ( )

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 that will not exceed the percentage of emission reduction required for that area. ( )

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 must submit the certificate of ownership to the Department. The Department will issue a revised certificate(s) of ownership that reflects the old and new holder(s) and amount(s) of banked emission reduction credits. ( )

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. ( )

462. -- 499. (RESERVED)

500. REGISTRATION PROCEDURES AND REQUIREMENTS FOR PORTABLE EQUIPMENT.

All existing portable equipment must be registered at least ten (10) days prior to relocating, using forms provided by the Department, except that no registration is required for mobile internal combustion engines, marine installations and locomotives. ( )

501. -- 509. (RESERVED)

510. STACK HEIGHTS AND DISPERSION TECHNIQUES.
Sections 510 through 514 establish criteria for good engineering practice for stack heights and dispersion techniques and apply to existing, new, and modified stationary sources and facilities. Sections 510 through 514 do not apply to stack heights in existence, or dispersion techniques implemented, on or before December 31, 1970, except where regulated or toxic air pollutant(s) are being emitted from such stacks or using such dispersion techniques by sources that were constructed, or reconstructed, or for which major modifications were carried out, after December 31, 1970. Definitions for Section 510 through 514 are found in 40 CFR 51.100 incorporated by reference in Section 107. ( )

511. REQUIREMENTS.
The required degree of emission control of any regulated or toxic air pollutant must not be affected by the amount of

any stack height that exceeds good engineering practice (GEP) or by any other dispersion technique. ( )

512. OPPORTUNITY FOR PUBLIC HEARING.
Whenever a new or revised emission limitation is to be based on a good engineering practice stack height that exceeds the height allowed by the GEP stack height formulae, the Department will notify the public of the availability of the demonstration study submitted and will provide an opportunity for public hearing on the demonstration study. ( )

513. APPROVAL OF FIELD STUDIES AND FLUID MODELS.
Any field study or fluid model used to demonstrate GEP stack height and any determination of "excessive concentration" must be approved by the EPA prior to an emission limit being established. The construction of any new stack or any increase to the height of any existing stack determined by the GEP stack height formulae without completing a fluid model and a field study, must be approved by the EPA. ( )

514. NO RESTRICTION ON ACTUAL STACK HEIGHT.
Sections 510 through 514 do not restrict, in any manner, the actual stack height of any stationary source or facility. ( )

515. –516. (RESERVED)

517. MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM.

Note: Sections 517 through 527 remain in effect until the repeal of Idaho Code § 39-116B on July 1, 2023 (see Senate Bill No. 1254).

01. Purpose. The purpose of Sections 517 through 527 is to set forth the minimum standards for a motor vehicle inspection and maintenance program, established pursuant to Section 39-116B, Idaho Code, for registered motor vehicles as defined in Section 49-123, Idaho Code. This program is designed to follow the basic inspection and maintenance program defined in 40 CFR 51.352. ( )

02. Applicability. Sections 517 through 527 apply only to the counties of Ada and Canyon and the cities of Boise, Eagle, Garden City, Meridian, Kuna, Star, Caldwell, Greenleaf, Melba, Middleton, Nampa, Notus, Parma, and Wilder. ( )

03. Options. ( )

a. Section 39-116B, Idaho Code, provides the counties and cities listed in Subsection 517.02 with the following implementation options. The counties and cities may: ( )

i. Enter into a joint exercise of powers agreement with the Director to implement a motor vehicle inspection and maintenance program; or ( )

ii. Obtain Department approval to implement an alternative motor vehicle emissions control strategy that will result in emissions reductions equivalent to that of a motor vehicle inspection and maintenance program. ( )

b. If neither of the options listed in Subsection 517.03.a. are selected, the Department shall implement the motor vehicle inspection and maintenance program. ( )

04. Governing Authority. For the purpose of Sections 517 through 527, governing authority means the governing entity responsible for the development and implementation of the motor vehicle inspection and maintenance program. The governing entity may be the counties and cities listed in Subsection 517.02 or the Department. The governing authority shall adopt Sections 517 through 527 of these rules. ( )

05. Exemptions. Sections 517 through 527 do not apply to the following: ( )

a. Electric or hybrid motor vehicles; ( )

b. Motor vehicles with a model year less than five (5) years old; ( )

c. Motor vehicles with a model year older than 1981; ( )

d. Classic automobiles as defined by Section 49-406A, Idaho Code; ( )

e. Motor vehicles with a maximum vehicle gross weight of less than fifteen hundred (1500) pounds; ( )

f. Motor vehicles registered as motor homes as defined by Section 49-114, Idaho Code; ( )

g. Motorized farm equipment; and ( )

h. Registered motor vehicles engaged solely in the business of agriculture. ( )

518. REQUIREMENTS FOR LICENSING AUTHORIZED INSPECTION STATIONS OR RETEST STATIONS.

01. General. ( )

a. No person or enterprise shall in any manner represent any place as an inspection station or retest station unless such station is operated under a valid license issued by the governing authority. ( )

b. No license for any inspection station or retest station may be assigned, transferred or used by other than the original applicant for that specific station. ( )

02. Applications for License. Applications for license as an inspection station or retest station shall be made on the forms provided by the governing authority. No license shall be issued unless the governing authority finds that the facilities, tools and equipment of the applicant comply with the requirements set forth in Subsections 518.03 or 518.04. ( )

03. Requirements for Licensed Inspection Stations. In order to qualify for issuance and continuance of an inspection station license, an establishment must meet the following requirements: ( )

a. Must have a permanent location; ( )

b. Must ensure that at least one employee, who has been issued an emissions technician license by the governing authority, is on duty at all times of station operation; ( )

c. Must demonstrate the ability to perform the emissions test and comply with reporting and recordkeeping requirements established by the governing authority; ( )

d. Must obtain and maintain in force appropriate business liability insurance; and ( )

e. Must have the tools, equipment and supplies, as required by the governing authority, available for performance of the emissions test. ( )

04. Requirements for Licensed Retest Stations. In order to qualify for issuance and continuance of a retest station license, an establishment must meet the requirements listed in Subsection 518.03. ( )

05. Approval Procedure. ( )

a. Applications received by the governing authority will be reviewed for completeness and an inspection of the facility will be performed. An inspection report will be prepared for the governing authority's review. ( )

b. Stations which meet the requirements of Subsections 518.01 through 518.04 will be granted an inspection station license or retest station license and issued a station sign. The station sign and license shall be posted in a conspicuous place, readily visible to the public. The station sign and license shall remain the property of the governing authority. ( )

06. Revocation of Inspection Station or Retest Station License. The governing authority has the authority to issue warnings and suspend or revoke a station license upon a showing that emission tests are not being performed in accordance with these rules and any other specifications or procedures enacted by the governing authority. ( )

519. REQUIREMENTS FOR LICENSING AUTHORIZED EMISSIONS TECHNICIANS.

01. Applications for License. Application for a license as an emissions technician shall be filed with the governing authority. Applications for the emissions technician license shall be completed on forms provided by the governing authority. ( )

02. Requirements for Issuance of an Emissions Technician License. An applicant must demonstrate the knowledge and skill necessary to perform an emissions test of motor vehicle engines. The governing authority shall require the minimum standards set forth in 40 CFR 51.367, incorporated by reference in Section 107. ( )

03. Revocation of Emissions Technician License. The governing authority has the authority to issue warnings and suspend or revoke an emissions technician license upon a showing that emission tests are not being performed in accordance with these rules or any other specifications or procedures enacted by the governing authority. ( )

520. INSPECTION FREQUENCY.
The inspection shall occur no more than once every two (2) years. If the owner of the motor vehicle obtains a waiver pursuant to Section 526, the motor vehicle must be inspected the following year. ( )

521. TEST PROCEDURE REQUIREMENTS.
The governing authority shall require the minimum standards set forth in 40 CFR 51.357(a), incorporated by reference in Section 107. ( )

522. TEST STANDARDS.
The governing authority shall require the minimum standards set forth in 40 CFR 51.357(b), incorporated by reference in Section 107. ( )

523. TEST EQUIPMENT.
The governing authority shall require the minimum standards set forth in 40 CFR 51.358, incorporated by reference in Section 107. ( )

524. INSPECTION FEE.
The fee for a motor vehicle inspection, as established in Section 39-116B(2)(g), Idaho Code, shall not exceed twenty dollars ($20) per vehicle. This fee is necessary to carry out the provisions of Sections 517 through 527 and to fund an air quality public awareness and outreach program. ( )

525. PUBLIC OUTREACH.
The governing authority shall issue a pamphlet for distribution to owners of motor vehicles. The pamphlet shall include, but not be limited to, the reasons for and the methods of the inspection. The governing authority may also establish and operate an informational hotline, website, or any other means of outreach that is deemed to be efficient and effective by the governing authority. ( )

526. WAIVERS.
The governing authority shall require the minimum standards set forth in 40 CFR 51.360(a), incorporated by reference in Section 107. If the owner of the motor vehicle obtains a waiver, the motor vehicle must be inspected the following year. ( )

01. Financial Hardship. If repairs required under Section 526 pose a financial hardship on the owner of the motor vehicle, the governing authority shall have the authority to issue a waiver without requiring expenditure of the amounts listed in 40 CFR 51.360(a). Such determination of hardship shall be made on a case-by-case basis by the governing authority. ( )

02. Public Service Vehicles Operating Less than 1,000 Miles Per Year. For public service vehicles owned by a governmental entity and operated less than one thousand (1,000) miles per year, the governing authority shall have the authority to issue a waiver without requiring expenditure of the amounts listed in 40 CFR 51.360(a). ( )

527. EXTENSIONS.
The governing authority shall have the authority to grant extensions for vehicles or vehicle owners temporarily located outside of a testing area that cannot easily be returned to an area for testing. The extension shall not exceed one (1) year. For active-duty military personnel and their families stationed outside the applicable testing area specified in Subsection 517.02, a time extension not to exceed the testing period is available. Military extensions shall be renewed with current military orders. ( )

Note: The deletion of Sections 517 through 527 is not effective until the repeal of Idaho Code § 39-116B on July 1, 2023 (see Senate Bill No. 1254).

517. – 527. (RESERVED)

528. -- 549. (RESERVED)

550. AIR QUALITY EPISODES.
Sections 550 through 562 define requirements for air quality episodes. ( )

551. -- 555. (RESERVED)

556. CRITERIA FOR DECLARING AIR QUALITY EPISODES.
An air quality episode will be declared by the Department when pollutant concentrations reach, or are forecasted to reach, and persist, at or above the levels listed below. Pollutant concentrations will be determined by the Department through its analysis of meteorological and ambient air quality monitoring data.

Pollutant	Averaging Period	Advisory[a]	Alert	Warning	Emergency[b]
CO	8 hour	NA	15 ppm	30 ppm	40 ppm
NO_2	1 hour	NA	0.6 ppm	1.2 ppm	1.6 ppm
	24 hour	NA	0.15 ppm	0.3 ppm	0.4 ppm
O_3	1 hour	NA	0.2 ppm	0.4 ppm	0.5 ppm
SO_2	24 hour	NA	0.3 ppm	0.6 ppm	0.8 ppm
$PM_{2.5}$	1 hour	80 µg/m^3	NA	NA	NA
	24 hour	50 µg/m^3	NA	NA	NA
PM_{10}	1 hour	385 µg/m^3	NA	NA	NA
	24 hour	150 µg/m^3	350 µg/m^3	420 µg/m^3	500 µg/m^3

Pollutant	Averaging Period	Advisory[a]	Alert	Warning	Emergency[b]

Table Footnotes

a. The Department may call an Advisory, if it determines, after evaluating the pertinent meteorology, weather conditions and air quality conditions such as visibility, and source parameters such as source type, strength, location and projected duration, that an Advisory is required to protect the public health.

b. The Department will only declare an emergency with specific concurrence of Governor.

( )

557. REQUIREMENTS DURING AIR QUALITY EPISODES.
All persons in an area under a declared air quality episode must comply with the following requirements. The Department may waive one (1) or more of the requirements at each episode level if, on the basis of information available, the requirement is an inappropriate response to the specific episode conditions that exist. ( )

01. Advisory. All open burning, as defined in Sections 600-624, is prohibited. No new ignition of open burning of any kind is allowed after an Advisory is declared. The Department may require, if practicable, or in an emergency situation, the cessation of any open burning. ( )

02. Alert. ( )

a. All open burning, as defined in Sections 600-624, is prohibited. ( )

b. The use of burners and incinerators for the disposal of any form of solid or liquid waste will be prohibited. ( )

c. Persons operating fuel-burning equipment that requires boiler lancing or soot blowing must perform such operations between the hours of 12:00 p.m. (noon) and 4:00 p.m. ( )

d. Commercial, industrial and institutional facilities utilizing coal or residual fuel oil are required to switch to natural gas or distillate oil if available. ( )

03. Warning. ( )

a. All open burning, as defined in Sections 600-624, is prohibited. ( )

b. The use of burners and incinerators for the disposal of any form of solid or liquid waste is prohibited. ( )

c. Persons operating fuel-burning equipment that requires boiler lancing or soot blowing must perform such operations between the hours of 12:00 p.m. (noon) and 4:00 p.m. ( )

d. Commercial, industrial and institutional facilities utilizing coal or residual fuel oil are required to either: ( )

i. Switch completely to natural gas or distillate oil; or ( )

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. ( )

04. Emergency. ( )

a. All open burning, as defined in Sections 600-624, is prohibited. ( )

b. The use of burners and incinerators for the disposal of any form of solid or liquid waste is prohibited. ( )

c. Persons operating fuel-burning equipment that requires boiler lancing or soot blowing must perform such operations between the hours of 12:00 p.m. (noon) and 4:00 p.m. ( )

d. Commercial, industrial and institutional facilities utilizing coal or residual fuel oil are required to either: ( )

i. Switch completely to natural gas or distillate oil; or ( )

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. ( )

558. NOTIFICATION OF AIR QUALITY EPISODE.

01. Method of Communication. When the Department declares an air quality episode, it will utilize appropriate media to ensure that the following information is announced to the public, affected government, and commercial, industrial, institutional, and agricultural entities as practicable. ( )

02. Information to Be Given.

a. Level of episode that is declared. ( )

b. Location and description of the designated area. ( )

c. Description of the cause of degraded air quality. ( )

d. Specific warnings and advice to those persons who, because of acute or chronic health problems, may be most susceptible to the effects of the degraded air quality. ( )

e. Air quality forecast for the following two (2) days. ( )

f. Duration of the episode and when the next statement from the Department will be issued. ( )

g. Listing of all requirements applicable to the public, commercial, institutional and industrial sectors. ( )

559.—561. (RESERVED)

562. SPECIFIC AIR QUALITY EPISODE ABATEMENT PLANS FOR STATIONARY SOURCES.
In addition to the general rules presented in Section 557, the Department will require that specific stationary sources adopt and implement their own Air Quality Episode Abatement Plans in accordance with the criteria set forth in Section 556. An individual plan can be revised periodically by the Department after consultation between the Department and the owners and/or operators of the source. ( )

563 – 576. (RESERVED)

577. AMBIENT AIR QUALITY STANDARDS FOR 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: ( )

01. Annual Standard. Forty (40) ppm, dry basis -- annual arithmetic mean. ( )

02. Bimonthly Standard. Sixty (60) ppm, dry basis -- monthly concentration for two (2) consecutive months. ( )

03. **Monthly Standard**. Eighty (80) ppm, dry basis -- monthly concentration never to be exceeded. ( )

578. (RESERVED)

579. BASELINES FOR PREVENTION OF SIGNIFICANT DETERIORATION.

01. **Baseline Date(s)**. ( )

a. Major Source Baseline Date. ( )

i. In the case of PM10 and sulfur dioxide, January 6, 1975; ( )

ii. In the case of nitrogen dioxide, February 8, 1988; and ( )

iii. In the case of PM2.5, October 20, 2010. ( )

b. Minor Source Baseline Date. 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: ( )

i. In the case of PM10 and sulfur dioxide, August 7, 1977; and ( )

ii. In the case of nitrogen dioxide, February 8, 1988. ( )

iii. In the case of PM2.5, October 20, 2011. ( )

c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if: ( )

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 ( )

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. ( )

d. Any minor source baseline date established originally for the TSP increments remains in effect and applies for purposes of determining the amount of available PM10 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 PM10 emissions. ( )

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 for the pollutant for which the baseline date is established, as follows: Equal to or greater than 1 µg/m3 (annual average) for SO2, NO2, or PM10; or equal or greater than 0.3 µg/m3 (annual average) for PM2.5. ( )

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. ( )

a. The baseline concentration represents: ( )

i. The actual emissions from sources in existence on the applicable minor source baseline date; and ( )

ii. The allowable emissions of major facilities and major modifications that commenced construction before the applicable major source baseline date, but were not in operation by the applicable minor source baseline date. ( )

b. The baseline concentration does not include the actual emissions of new major facilities and major modifications that commenced construction on or after the applicable major source baseline date. ( )

580. CLASSIFICATION OF PREVENTION OF SIGNIFICANT DETERIORATION AREAS.

01. Restrictions On Area Classification. Restrictions on classification are listed in 40 CFR 52.21(e). ( )

02. Procedures for Redesignation of Prevention of Significant Deterioration (PSD) Areas. The Governor may submit to EPA a proposal to redesignate areas as a revision to the SIP. In preparing any such proposal the Department will: ( )

a. Consult with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation; ( )

b. 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; ( )

c. 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 will 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; ( )

d. 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; ( )

e. 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 ( )

f. Hold at least one (1) public hearing on the proposed redesignation. ( )

581. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) INCREMENTS.
Section 581 establishes the allowable degree of deterioration for the areas within the State that have air quality better than the ambient standards. ( )

01. Incorporated Federal Program Requirements - Class I, II and III Areas. Class I, II, and III area PSD increment requirements contained in 40 CFR 52.21(c) are incorporated by reference in Section 107. These CFR sections have been codified in the electronic CFR at www.ecfr.gov. ( )

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. ( )

03. Exclusions. The following concentrations will be excluded in determining compliance with the

maximum allowable increases: ( )

a. Concentrations attributable to the increase in emissions from facilities that 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 does not apply more than five (5) years after the effective date of such order or plan; ( )

b. Concentrations of PM-10 attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified facilities; ( )

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 ( )

d. Concentrations attributable to the temporary increase in emissions of sulfur dioxide, nitrogen dioxide, or particulate matter from facilities that are affected by a revision to the SIP approved by EPA; this exclusion may not exceed two (2) years unless a longer time is approved by EPA, is not renewable, and applies only to revisions that: ( )

i. Would not affect the applicable 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 ( )

ii. Require limitations to be in effect at the end of the approved time period that would ensure that the emissions from facilities affected by the revision would not exceed those concentrations occurring before the revision was approved. ( )

582. -- 584. (RESERVED)

585. TOXIC AIR POLLUTANTS NON-CARCINOGENIC INCREMENTS.
The screening emissions levels (EL) and acceptable ambient concentrations (AAC) for non-carcinogens are as provided in the following table. The AAC in this section are twenty-four (24) hour averages. ( )

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
60-35-5	Acetamide (NY)	--	0.002	0.0003
64-19-7	Acetic acid	25	1.67	1.25
108-24-7	Acetic anhydride	20	1.33	1
67-64-1	Acetone	1780	119	89
75-05-8	Acetonitrile	67	4.47	3.35
540-59-0	Acetylene dichloride, See 1,2-Dichloroethylene			
79-27-6	Acetylene tetrabromide	15	1	.75
107-02-8	Acrolein	0.25	0.017	0.0125
79-10-7	Acrylic acid	30	2	1.5
107-18-6	Allyl alcohol	5	0.333	.25
106-92-3	Allyl glycidyl ether	22	1.47	1.1
2179-59-1	Allyl propyl disulfide	12	0.8	0.6

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
7429-90-5	Aluminum Including:			
NA	Metal & Oxide	10	0.667	0.5
NA	Pyro powders	5	0.333	0.25
NA	Soluble salts	2	0.133	0.10
NA	Alkyls not otherwise classified	2	0.133	0.10
141-43-5	2-Aminoethanol, See Ethanolamine			
504-29-0	2-Aminopyridine	2	0.133	0.10
7664-41-7	Ammonia	18	1.2	0.9
12125-02-9	Ammonium chloride fume	10	0.667	0.5
3825-26-1	Ammonium perfluo-octanoate	0.1	0.007	0.05
7773-06-0	Ammonium sulfamate	10	0.667	0.5
628-63-7	n-Amyl acetate	530	35.3	26.5
626-38-0	Sec-Amyl acetate	665	44.3	33.25
7440-36-0	Antimony & compounds, as Sb (handling & use)	0.5	0.033	0.025
86-88-4	ANTU	0.3	0.02	0.015
7784-42-1	Arsine	0.2	0.013	0.01
86-50-0	Azinphos-methyl	0.2	0.013	0.01
7440-39-3	Barium, soluble compounds, as Ba	0.5	0.033	0.025
17804-35-2	Benomyl	10	0.67	0.5
7106-51-4	p-Benzoquinone, See Quinone			
94-36-0	Benzoyl peroxide	5	0.333	0.25
92-52-4	Biphenyl	1.5	0.1	0.075
1304-82-1	Bismuth telluride undoped	10	0.667	0.05
NA	Bismuth telluride if selenium doped	5	0.333	0.25
1303-96-4	Borates, tetra odium salts - Including:			
NA	Anhydrous	1	0.067	0.05
NA	Decahydrate	5	0.333	0.25
NA	Pentahydrate	1	0.067	0.05
1303-86-2	Boron oxide	10	0.667	0.5
10294-33-4	Boron tribromide	10	0.667	0.5
7637-07-2	Boron trifluoride	3	0.2	0.25
314-40-9	Bromacil	10	0.667	0.5
7726-95-6	Bromine	0.7	0.047	0.035
7789-30-2	Bromine penta-fluoride	0.7	0.047	0.035

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
75-25-2	Bromoform	5	0.333	0.25
109-79-5	Butanethiol, see Butyl mercaptan			
78-93-3	2-Butanone, see Methyl ethyl ketone			
112-07-2	2-butoxyethyl acetate	---	8.33	1.25
111-76-2	2-Butoxyethanol (EGBG)	120	8	6
123-86-4	n-Butyl acetate	710	47.3	35.5
105-46-4	sec-Butyl acetate	950	63.3	47.5
540-88-5	tert-Butyl acetate	950	63.3	47.5
141-32-2	Butyl acrylate	55	3.67	2.75
71-36-3	n-Butyl alcohol	150	10	7.5
78-92-2	Sec-Butyl alcohol	305	20.3	15.25
75-65-0	tert-Butyl alcohol	300	20	15
109-73-9	Butylamine	15	1	.75
124-17-4	Butyl carbitol acetate (ID)	---	0.846	.625
1189-85-1	tert-Butyl chromate, as CrO3	0.1	0.007	.005
2426-08-6	n-Butyl glycidyl ether	135	9	6.75
138-22-7	n-Butyl lactate	25	1.67	1.25
109-79-5	Butyl mercaptan	1.8	0.12	0.09
89-72-5	o-sec-Butylphenol	30	2	1.5
98-51-1	p-tert-Butyltoluene	60	4	3
1317-65-3	Calcium carbonate	10	0.667	0.5
156-62-7	Calcium cyanamide	0.5	0.033	0.025
1305-62-0	Calcium hydroxide	5	0.333	0.25
1305-78-8	Calcium oxide	2	0.133	0.1
1344-95-2	Calcium silicate (synthetic)	10	0.667	0.5
13397-24-5	Calcium sulfate	10	0.667	0.5
76-22-2	Camphor, synthetic	12	0.8	0.6
105-60-2	Caprolactam - Including:			
	Dust	1	0.067	0.05
	Vapor	20	1.33	1.0
1333-86-4	Carbon black	3.5	0.23	0.175
2425-06-1	Captafol	0.1	0.007	0.005
133-06-2	Captan	5	0.333	0.25
463-58-1	Carbonyl sulfide	0.4	0.027	0.02

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
63-25-2	Carbaryl	5	0.333	0.25
1563-66-2	Carbofuran	0.1	0.007	0.005
75-15-0	Carbon disulfide	30	2	1.5
558-13-4	Carbon tetrabromide	1.4	0.093	0.07
75-44-5	Carbonyl chloride, See Phosgene			
353-50-4	Carbonyl fluoride	5	0.333	0.25
120-80-9	Catechol	20	1.33	1.0
21351-79-1	Cesium hydroxide	2	0.133	0.10
133-90-4	Chloramben (PL)	---	887	133
8001-35-2	Chlorinated camphene	0.5	0.0333	0.025
31242-93-0	Chlorinated diphenyl oxide	0.5	0.033	0.025
7782-50-5	Chlorine	3	0.2	0.15
10049-04-4	Chlorine dioxide	0.3	0.02	0.015
7790-91-2	Chlorine trifluoride (CL)	0.38	0.025	0.002
107-20-0	Chloroacetaldehyde	0.32	0.021	0.015
78-95-5	Chloroacetone	0.38	0.0253	0.019
532-27-4	a-Chloroacetophenone	0.32	0.021	0.016
79-04-9	Chloroacetyl chloride	0.2	0.013	0.01
108-90-7	Chlorobenzene	350	23.3	17.5
510-15-6	Chlorobenzilate (PL1)	---	0.047	0.035
2698-41-1	O-Chlorobenzylidene malononitrile (CL)	0.4	0.0027	0.03
126-99-8	2-Chloro-1,3-butadiene, see B-Chloroprene			
107-07-3	2-Chloroethanol, see Ethylene chlorohydrin			
600-25-9	1-Chloro-1-nitro propane	10	0.667	0.5
95-57-8	2-Chlorophenol (and all isomers) (ID)	---	0.033	0.025
76-06-2	Chloropicrin	0.7	0.047	0.037
126-99-8	B-chloroprene	36	2.4	1.8
2039-87-4	o-Chlorostyrene	285	19	14.25
95-49-8	o-Chlorotoluene	250	16.7	12.5
1929-82-4	2-Chloro-6-(tri-chloromethyl) pyridine, see Nitrapyrin			
2921-88-2	Chlorpyrifos	0.2	0.013	0.01
7440-47-3	Chromium metal - Including:	0.5	0.033	0.025
7440-47-3	Chromium (II) compounds, as Cr	0.5	0.033	0.025
16065-83-1	Chromium (III) compounds, as Cr	0.5	0.033	0.025

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
2971-90-6	Clopidol	10	0.667	0.5
NA	Coal dust (<5% silica)	2	0.133	0.1
10210-68-1	Cobalt carbonyl as Co	0.1	0.007	0.005
16842-03-8	Cobalt hydrocarbonyl as Co	0.1	0.007	0.005
7440-48-4	Cobalt metal, dust, and fume	0.05	0.0033	0.0025
7440-50-8	Copper:			
7440-50-8	Fume	0.2	0.013	0.01
7440-50-8	Dusts & mists, as Cu	1	0.067	0.05
95-48-7	o-Cresol	22	1.47	1.1
108-39-4	m-Cresol	22	1.47	1.1
106-44-5	p-Cresol	22	1.47	1.1
1319-77-3	Cresols/Cresylic Acid (isomers and mixtures)	22	1.47	1.1
123-73-9	Crotonaldehyde	5.7	0.38	0.285
299-86-5	Cruformate	5	0.333	0.25
98-82-8	Cumene	245	16.3	12.25
420-04-2	Cyanamide	2	0.133	0.1
592-01-8	Cyanide and compounds as CN	5	0.333	0.25
110-82-7	Cyclohexane	1050	70	52.5
108-93-0	Cyclohexanol	200	13.3	10
108-94-1	Cyclohexanone	100	6.67	5
110-83-8	Cyclohexene	1015	67.7	50.75
108-91-8	Cyclohexylamine	41	2.73	2.05
121-82-4	Cyclonite	1.5	0.1	0.075
542-92-7	Cyclopentadiene	200	13.3	10
287-92-3	Cyclopentane	1720	114.667	86
94-75-7	2,4-D	10	0.667	0.5
17702-41-9	Decaborane	0.3	0.02	0.015
8065-48-3	Demeton	0.1	0.007	0.005
123-42-2	Diacetone alcohol	240	16	12
39393-37-8	Dialkyl phthalate (ID)	---	16.4	2.46
107-15-3	1,2-Diaminoethane, See Ethylenediamine			
333-41-5	Diazinon	0.1	0.007	0.005
334-88-3	Diazomethane	0.34	0.023	0.017
19287-45-7	Diborane	0.1	0.007	0.005

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
102-81-8	2-N-Dibutylamino ethanol	14	0.933	0.7
2528-36-1	Dibutyl phenyl phosphate	3.5	0.233	0.175
107-66-4	Dibutyl phosphate	8.6	0.573	0.43
84-74-2	Dibutyl phthalate	5	0.333	0.25
7572-29-4	Dichloroacetylene	0.39	0.0026	0.0195
95-50-1	o-Dichlorobenzene	300	20	15
106-46-7	1,4-Dichlorobenzene	450	30	22.5
118-52-5	1,3-Dichloro-5, 5-dimethyl hydantoin	0.2	0.013	0.025
75-34-3	Dichloroethane	405	27	20.25
540-59-0	1,2-Dichloroethylene	790	52.7	39.5
111-44-4	Dichloroethyl ether	30	2	1.5
75-43-4	Dichlorofluoromethane	40	2.67	2
594-72-9	1, l-Dichloro-l-nitroethane	10	0.667	0.5
78-87-5	1,2-Dichloropropane, see Propylene dichloride			
75-99-0	2,2-Dichloropropionic acid	6	0.4	0.3
62-73-7	Dichlorvos	1	0.067	0.05
141-66-2	Dicrotophos	0.25	0.017	0.125
77-73-6	Dicyclopentadiene	30	2	1.5
102-54-5	Dicyclopentadienyl iron	10	0.667	0.5
111-42-2	Diethanolamine	15	1	0.75
109-89-7	Diethylamine	30	2	1.5
100-37-8	2-Diethylamino-ethanol	50	3.33	2.5
111-40-0	Diethylene triamine	4	0.267	0.2
60-29-7	Diethyl ether	1200	80	60
96-22-0	Diethyl Ketone	705	47	35.25
84-66-2	Diethyl phthalate	5	0.333	0.25
2238-07-5	Diglycidyl ether (DGE)	0.53	0.035	0.0265
123-31-9	Dihydroxybenzene, see Hydroquinone			
108-83-8	Diisobutyl ketone	145	9.67	7.25
108-18-9	Diisopropylamine	20	1.33	1
127-19-5	Dimethyl acetamide	35	2.33	1.75
124-40-3	Dimethylamine	9.2	0.613	0.46
60-11-7	Dimethyl aminoazo-benzene (NY)	---	0.002	0.0003
1300-73-8	Dimethylamino-benzene, see Xylidine			

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
121-69-7	Dimethylaniline (N,N-Dimethylaniline)	25	1.67	1.25
1330-20-7	Dimethylbenzene, see Xylene			
300-76-5	Dimethyl-1,2-dibromo-2-dichloroethyl phosphate, see Naled			
68-12-2	Dimethylformamide	30	2	1.5
108-83-8	2,6-Dimethyl-4-heptanone, see Diisobutyl ketone			
131-11-3	Dimethylphthalate	5	0.333	0.25
148-01-6	Dinitolmide	5	0.333	0.25
528-29-0	Dinitrobenzene	1	0.067	0.05
99-65-0	m (or) 1,3-Dinitrobenzene	1	0.067	0.05
100-25-4	p (or) 1,4-Dinitrobenzene	1	0.067	0.05
534-52-1	Dinitro-o-cresol	0.2	0.013	0.01
148-01-6	3,5-Dinitro-o-toluamide, see Dinitolmide			
117-84-0	N-Dioctyl Phthalate	5	0.333	0.25
78-34-2	Dioxathion	0.2	0.013	0.01
92-52-4	Diphenyl, see Biphenyl			
122-39-4	Diphenylamine	10	0.667	0.5
	Diphenyl methane diisocyanate, see Methylenediphenyl diisocyanate			
34590-94-8	Dipropylene glycol methyl ether	600	40	30
123-19-3	Dipropyl ketone	235	15.7	11.75
85-00-7	Diquat	0.5	0.033	0.01
97-77-8	Disulfiram	2	0.133	0.1
298-04-4	Disulfoton	0.1	0.007	0.005
128-37-0	2,6-Ditert. butyl-p-cresol	10	0.667	0.5
330-54-1	Diuron	10	0.667	0.5
108-57-6	Divinyl benzene	50	3.33	2.5
1302-74-5	Emery (corundum) total dust (> 1% silica)	10	0.667	0.5
115-29-7	Endosulfan	0.1	0.007	0.005
72-20-8	Endrin	0.1	0.007	0.005
13838-16-9	Enflurane	566	37.7	28.3
1395-21-7	Enzymes, see Subtilisins			
2104-64-5	EPN (Ethoxy-4-Nitro-phenoxy phenylphosphine)	0.5	0.033	0.025
106-88-7	1,2-Epoxybutane (MI)	---	0.8	0.6

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
75-56-9	1,2-Epoxypropane, see Propylene oxide			
556-52-5	2,3-Epoxy-1-propanol, see Glycidol			
75-08-1	Ethanethiol, see Ethyl mercaptan			
141-43-5	Ethanolamine	8	0.533	0.4
563-12-2	Ethion	0.4	0.027	0.02
110-80-5	2-Ethoxyethanol	19	1.27	0.95
111-15-9	2-Ethoxyethyl acetate (EGEEA)	27	1.8	1.35
141-78-6	Ethyl acetate	1400	93.3	70
64-17-5	Ethyl alcohol	1880	125	94
75-04-7	Ethylamine	18	1.2	0.9
541-85-5	Ethyl amyl ketone	130	8.67	6.5
100-41-4	Ethyl benzene	435	29	21.75
74-96-4	Ethyl bromide	22	1.47	1.1
106-35-4	Ethyl butyl ketone	230	15.3	11.5
51-79-6	Ethyl carbamate (Urethane) (WA)	---	0.002	0.0015
75-00-3	Ethyl chloride	2640	176	132
107-07-3	Ethylene chlorohydrin	3	0.2	0.15
107-15-3	Ethylenediamine	25	1.67	1.25
107-06-2	Ethylene dichloride	40	2.667	2
107-21-1	Ethylene glycol vapor (CL)	127	0.846	6.35
628-96-6	Ethylene glycol denigrate	0.31	0.021	0.016
110-49-6	Ethylene glycol methyl ether acetate, see 2-Methoxyethyl acetate			
96-45-7	Ethylene thiourea (PL2)	---	0.047	0.035
109-94-4	Ethyl formate	300	20	15
16219-75-3	Ethylidene norbornene (CL)	25	0.167	1.25
75-08-1	Ethyl mercaptan	1	0.067	0.05
100-74-3	N-Ethylmorpholine	23	1.53	1.15
78-10-4	Ethyl silicate	85	5.67	4.25
22224-92-6	Fenamiphos	0.1	0.007	0.005
115-90-2	Fensulfothion	0.1	0.007	0.005
55-38-9	Fenthion	0.2	0.013	0.01
14484-64-1	Ferbam	10	0.667	0.5
12604-58-9	Ferrovanadium dust	1	0.067	0.05

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
NA	Fibrous glass dust	10	0.667	0.5
NA	Fine Mineral Fibers - Including: mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less. (ID)	--	0.661	0.5
NA	Fluorides, as F	2.5	0.167	0.125
7782-41-4	Fluorine	2	0.133	0.1
944-22-9	Fonofos	0.1	0.007	0.005
75-12-7	Formamide	30	2	1.5
64-18-6	Formic acid	9.4	0.627	0.47
98-01-1	Furfural	8	0.533	0.4
98-00-0	Furfuryl alcohol	40	2.67	2
7782-65-2	Germanium tetrahydride	0.6	0.04	0.03
NA	Glass, Fibrous or dust, see Fibrous glass dust			
111-30-8	Glutaraldehyde (CL)	0.82	0.0047	0.041
556-52-5	Glycidol	75	5	3.75
110-80-5	Glycol monoethyl ether, see 2-Ethoxyethanol			
7440-58-6	Hafnium	0.5	0.033	0.025
110-43-0	2-Heptanone, see Methyl n-amyl ketone			
106-35-4	3-Heptanone, see Ethyl butyl ketone			
151-67-7	Halothane	404	26.9	20.2
142-82-5	Heptane (n-Heptane)	1640	109	82
77-47-4	Hexachlorocyclopentadiene	0.1	0.007	0.005
1335-87-1	Hexachloronaphthalene	0.2	0.013	0.010
684-16-2	Hexafluoroacetone	0.7	0.047	0.035
822-06-0	Hexamethylene diisocyanate	0.03	0.002	0.0015
680-31-9	Hexamethylphosphoramide (WA)	---	0.002	0.0015
110-54-3	Hexane (n-Hexane)	180	12	9
591-78-6	2-Hexanone, see Methyl n-butyl ketone			
108-10-1	Hexone, see Methyl isobutyl ketone			
108-84-9	sec-Hexyl acetate	300	20	15
107-41-5	Hexylene glycol (CL)	121	0.806	6.05
37275-59-5	Hydrogenated terphenyls	5	0.333	0.25
10035-10-6	Hydrogen bromide (CL)	10	0.0667	0.5

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
7647-01-0	Hydrogen chloride (CL)	7.5	0.05	0.375
7722-84-1	Hydrogen peroxide	1.5	0.1	0.075
7783-06-4	Hydrogen sulfide	14	0.933	0.7
123-31-9	Hydroquinone	2	0.133	0.1
123-42-2	4-Hydroxy-4-Methyl-2-pentanone, see Diacetone alcohol			
999-61-1	2 -Hydroxypropyl acrylate	3	0.2	0.15
95-13-6	Indene	45	3	2.25
7440-74-6	Indium & compounds as In	0.1	0.007	0.005
7553-56-2	Iodine (CL)	0.1	0.0067	0.005
75-47-8	Iodoform	10	0.667	0.5
1309-37-1	Iron oxide fume (Fe2O3) as Fe	5	0.333	0.25
13463-40-6	Iron pentacarbonyl as Fe	0.8	0.053	0.04
7439-89-6	Iron salts, soluble, as Fe	1	0.067	0.05
123-92-2	Isoamyl acetate	525	35	26.25
123-51-3	Isoamyl alcohol	360	24	18
110-19-0	Isobutyl acetate	700	46.7	35
78-83-1	Isobutyl alcohol	150	10	6
26952-21-6	Isooctyl alcohol	270	18	13.5
78-59-1	Isophorone	28	1.867	1.4
4098-71-9	Isophorone diisocyanate	0.09	0.006	0.0045
109-59-1	Isopropoxyethanol	105	7	5.25
108-21-4	Isopropyl Acetate	1040	69.3	52
67-63-0	Isopropyl alcohol	980	65.3	49
75-31-0	Isopropylamine	12	0.8	0.6
643-28-7	N-Isopropylaniline	10	0.667	0.5
108-20-3	Isopropyl ether	1040	69.3	52
4016-14-2	Isopropyl glycidyl ether (IGE)	240	16	12
1332-58-7	Kaolin (respirable dust)	2	0.133	0.1
463-51-4	Ketene	0.9	0.06	0.045
7580-67-8	Lithium hydride	0.025	0.002	0.00125
546-93-0	Magnesite	10	0.667	0.5
1309-48-4	Magnesium oxide fume	10	0.667	0.5
121-75-5	Malathion	10	0.667	0.5
108-31-6	Maleic anhydride	1	0.067	0.05

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
7439-96-5	Manganese as Mn Including:			
7439-96-5	Dust & compounds	5	0.333	0.25
7439-96-5	Fume	1	0.067	0.05
101-68-8	MDI, see Methylene diphenyl isocyanate			
NA	Mercaptans not otherwise listed (ID)	---	0.033	0.025
141-79-7	Mesityl oxide	60	4	3
79-41-4	Methacrylic acid	70	4.67	3.5
74-93-1	Methanethiol, see Methyl mercaptan			
67-56-1	Methanol	260	17.3	13
16752-77-5	Methomyl	2.5	0.17	0.125
72-43-5	Methoxychlor	10	0.667	0.5
109-86-4	2-Methoxyethanol	16	1.07	0.8
110-49-6	2-Methoxyethyl acetate	24	1.6	1.2
150-76-5	4-Methoxyphenol	5	0.333	0.25
108-65-6	1-methoxy-2-propyl acetate (ID)	n/a	24	3.6
79-20-9	Methyl acetate	610	40.7	30.5
74-99-7	Methyl acetylene	1640	109	82
NA	Methyl acetylene-propadiene mix (MAPP)	1640	109	82
96-33-3	Methyl acrylate	35	2.33	1.75
126-98-7	Methylacrylonitrile	3	0.2	0.15
74-89-5	Methylamine	12	0.8	0.6
108-11-2	Methyl emyl alcohol, see Methyl isobutyl carbinol			
110-43-0	Methyl n-amyl ketone	235	15.7	11.75
100-61-8	N-Methyl aniline	2	0.133	0.1
74-83-9	Methyl bromide	19	1.27	0.95
591-78-6	Methyl n-butyl ketone	20	1.33	1
74-87-3	Methyl chloride	103	6.867	5.15
71-55-6	Methyl chloroform	1910	127	95.5
137-05-3	Methyl 2-cyano-acrylate	8	0.533	0.4
25639-42-3	Methylcyclohexanol	235	15.7	11.75
583-60-8	o-Methylcyclohexanone	230	15.3	11.5
8022-00-2	Methyl demeton	0.5	0.033	0.01
101-68-8	Methylenediphenyl diisocyanate (MDI)	0.05	0.003	0.0025
5124-30-1	Methylene bis (4-cyclohexyl isocyanate)	0.11	0.007	0.0055

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
78-93-3	Methyl ethyl ketone (MEK)	590	39.3	29.5
1338-23-4	Methyl ethyl ketone peroxide (CL)	1.5	0.01	0.0075
107-31-3	Methyl formate	246	16.4	12.3
541-85-5	5-Methyl-3-heptanone, see Ethyl amyl ketone			
110-12-3	Methyl isoamyl ketone	240	16	12
108-11-2	Methyl isobutyl carbinol	104	6.93	5.2
108-10-1	Methyl isobutyl ketone	205	13.7	10.25
624-83-9	Methyl isocyanate	0.05	0.003	0.0025
563-80-4	Methyl isopropyl ketone	705	47	35.25
74-93-1	Methyl mercaptan	0.5	0.033	0.025
80-62-6	Methyl methacrylate	410	27.3	20.5
298-00-0	Methyl parathion	0.2	0.013	0.01
107-87-9	Methyl propyl ketone	700	46.7	35
681-84-5	Methyl silicate	6	0.4	0.3
98-83-9	a-Methyl styrene	240	16	10.20
109-87-5	Methylal (dimethoxymethane)	3110	207	155.5
108-87-2	Methylcyclohexane	1610	107	80.5
21087-64-9	Metribuzin	5	0.333	0.25
7786-34-7	Mevinphos	0.1	0.007	0.005
12001-26-2	Mica (Respirable dust)	3	0.2	0.15
NA	Mineral Wool Fiber (no asbestos)	10	0.667	0.5
7439-98-7	Molybdenum as Mo - Including:			
NA	Soluble compounds	5	0.333	0.25
NA	Insoluble compounds	10	0.667	0.5
108-90-7	Monochlorobenzene, see Chlorobenzene			
6923-22-4	Monocrotophos	0.25	0.017	0.0125
110-91-8	Morpholine	70	4.67	0.35
300-76-5	Naled	3	0.2	0.15
91-20-3	Naphthalene	50	3.33	2.5
54-11-5	Nicotine	0.5	0.033	0.025
1929-82-4	Nitrapyrin	10	0.667	0.5
7697-37-2	Nitric acid	5	0.333	0.25
100-01-6	p-Nitroaniline	3	0.2	0.15
98-95-3	Nitrobenzene	5	0.333	0.25

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
100-00-5	p-Nitrochlorobenzene	3	0.2	0.15
79-24-3	Nitroethane	310	20.7	15.5
7783-54-2	Nitrogen trifluoride	29	1.93	1.45
55-63-0	Nitroglycerin	0.46	0.031	0.023
75-52-5	Nitromethane	50	3.333	2.5
108-03-2	1-Nitropropane	90	6	4.5
99-08-1	m (or) 3-Nitrotoluene	11	0.733	0.55
88-72-2	o (or) 2-Nitrotoluene	11	0.733	0.55
99-99-0	p (or) 4-Nitrotoluene	11	0.733	0.55
76-06-2	Nitrotrichloromethane, see Chloropicrin			
10024-97-2	Nitrous oxide	90	6	4.5
111-84-2	Nonane	1050	70	52.5
2234-13-1	Octachloronaphthalene	0.1	0.007	0.005
111-65-9	Octane	1400	93.3	70
NA	Oil mist, mineral	5	0.333	0.25
20816-12-0	Osmium tetroxide as Os	0.002	0.0001	0.0001
144-62-7	Oxalic acid	1	0.067	0.05
7783-41-7	Oxygen difluoride (CL)	0.11	0.0007	0.0005
8002-74-2	Paraffin wax fume	2	0.133	0.1
4685-14-7	Paraquat	0.1	0.007	0.007
NA	Paraquat, all Compounds	0.1	0.007	0.005
56-38-2	Parathion	0.1	0.007	0.005
19624-22-7	Pentaborane	0.01	0.001	0.0005
1321-64-8	Pentachloronaphthalene	0.5	0.033	0.025
82-68-8	Pentachloronitrobenzene	0.5	0.0333	0.025
87-86-5	Pentachlorophenol	0.5	0.033	0.025
109-66-0	Pentane	1770	118	88.5
107-87-9	2-Pentanone, see Methyl propyl ketone			
594-42-3	Perchloromethyl mercaptan	0.8	0.053	0.04
7616-94-6	Perchloryl Fluoride	13	0.867	0.65
93763-70-3	Perlite	10	0.667	0.5
532-27-4	Phenacyl chloride, see a-Chloroacetophenone			
108-95-2	Phenol	19	1.27	0.95
92-84-2	Phenothiazine	5	0.333	0.25

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
108-45-2	m-Phenylenediamine	0.1	0.0067	0.005
106-50-3	p-Phenylenediamine	0.1	0.007	0.005
101-84-8	Phenyl ether, vapor	7	0.467	0.035
122-60-1	Phenyl glycidyl ether (PGE)	6	0.4	0.3
108-98-5	Phenyl mercaptan	2	0.133	0.1
638-21-1	Phenylphosphine (CL)	0.25	0.0017	0.00125
298-02-2	Phorate	0.05	0.003	0.001
7786-34-7	Phosdrin, see Mevinphos			
75-44-5	Phosgene	0.4	0.027	0.02
7803-51-2	Phosphine	0.4	0.027	0.02
7664-38-2	Phosphoric acid	1	0.067	0.05
7723-14-0	Phosphorus	0.1	0.007	0.005
10025-87-3	Phosphorus oxychloride	0.6	0.04	0.030
10026-13-8	Phosphorus penta-chloride	1	0.067	0.05
1313-80-3	Phosphorus penta-sulfide	1	0.067	0.05
1314-56-3	Phosphorus pentoxide (ID)	--	0.067	0.05
7719-12-2	Phosphorus trichloride	1.5	0.1	0.075
85-44-9	Phthalic anhydride	6	0.4	0.3
626-17-5	m-Phthalodinitrile	5	0.333	0.25
1918-02-1	Picloram	10	0.667	0.5
88-89-1	Picric acid	0.1	0.006	0.005
83-26-1	Pindone	0.1	0.007	0.005
142-64-3	Piperazine dihydro-chloride	5	0.333	0.25
83-26-1	2-Pivaloyl-l,3-indandione, see Pindone			
7440-06-4	Platinum - Including:			
7440-06-4	Metal	1	0.067	0.05
NA	Soluble salts, as Pt	0.002	0.0001	0.0001
65997-15-1	Portland cement	10	0.667	0.5
1310-58-3	Potassium hydroxide	2	0.133	0.1
107-19-7	Propargyl alcohol	2.3	0.153	0.115
123-38-6	Propionaldehyde (LA)	0.43	0.0287	0.0215
79-09-4	Propionic acid	30	2	1.5
114-26-1	Propoxur (Baygon)	0.5	0.033	0.025
109-60-4	n-Propyl acetate	840	56	42

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
71-23-8	Propyl alcohol	500	33.3	25
78-87-5	Propylene dichloride	347	23.133	17.35
6423-43-4	Propylene glycol dinitrate	0.34	0.023	0.017
107-98-2	Propylene glycol monomethyl ether	360	24	18
75-56-9	Propylene oxide	48	3.2	2.4
627-13-4	n-Propyl nitrate	105	7	5.25
8003-34-7	Pyrethrum	5	0.333	0.25
110-86-1	Pyridine	15	1	0.75
120-80-9	Pyrocatechol, see Catechol			
106-51-4	Quinone	0.4	0.027	0.02
121-84-4	RDX, see Cyclonite			
NA	Refractory Ceramic Fibers (see entry for specific content of emissions, ex: silica)			
108-46-3	Resorcinol	45	3	2.25
7440-16-6	Rhodium - Including:			
7440-16-6	Metal	1	0.067	0.05
NA	Insoluble compounds, as Rh	1	0.067	0.05
NA	Soluble compounds, as Rh	0.01	0.001	0.0005
299-84-3	Ronnel	10	0.667	0.5
83-79-4	Rotenone (commercial)	5	0.333	0.25
8030-30-6	Rubber solvent (Naphtha)	1590	106	79.5
14167-18-1	Salcoine as CO	0.1	0.007	0.005
7782-49-2	Selenium	0.2	0.013	0.010
NA	Selenium and compounds as Se	0.2	0.013	0.01
136-78-7	Sesone	10	0.667	0.5
7803-62-5	Silane, see silicon tectrahydride			
NA	Silica - amorphous - Including:			
61790-53-2	Diatomaceous earth (uncalcined)	10	0.667	0.5
112926-00-8	Precipitated silica	10	0.667	0.5
112926-00-8	Silica gel	10	0.667	0.5
NA	Silica, crystalline - Including:			
14464-46-1	Cristobalite	0.05	0.0033	0.0025
14808-60-7	quartz	0.1	0.0067	0.005

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
60676-86-0	silica, fused	0.1	0.0067	0.005
15468-32-3	tridymite	0.05	0.0033	0.0025
1317-95-9	Tripoli	0.1	0.0067	0.005
7440-21-3	Silicon	10	0.667	0.5
409-21-2	Silicon carbide	10	0.667	0.5
7803-62-5	Silicon tetrahydride	7	0.467	0.35
7440-22-4	Silver - Including			
7440-22-4	Metal	0.1	0.007	0.005
7440-22-4	Soluble compounds, as Ag	0.01	0.001	0.005
26628-22-8	Sodium azide (CL)	0.3	0.002	0.0015
7631-90-5	Sodium bisulfite	5	0.333	0.25
136-78-7	Sodium 2,4-dichloro-phenoxyethyl sulfate, see Sesone			
62-74-8	Sodium fluoroacetate	0.05	0.003	0.0025
1310-73-2	Sodium hydroxide	2	0.133	0.1
7681-57-4	Sodium metabisulfite	5	0.333	0.25
NA	Stearates (not including toxic metals)	10	0.667	0.5
7803-52-3	Stibine	0.5	0.033	0.025
8052-41-3	Stoddard solvent	525	35	26.25
57-24-9	Strychnine	0.15	0.01	0.0075
60-41-3	Strychnine sulfate as strichnine	0.15	0.01	0.01
100-42-5	Styrene monomer (ID)	--	6.67	1
1395-21-7	Subtilisins (Proteolytic enzymes as 100% pure crystalline enzyme)	0.00006	4.0E-07	3.0E-7
3689-24-5	Sulfotep	0.2	0.013	0.01
7664-93-9	Sulfuric acid	1	0.067	0.05
10025-67-9	Sulfur monochloride (CL)	6	0.04	0.03
5714-22-7	Sulfur pentafluoride (CL)	0.1	0.0007	0.0005
7783-60-0	Sulfur tetrafluoride (CL)	0.4	0.0027	0.002
2699-79-8	Sulfuryl fluoride	20	1.33	1
35400-43-2	Sulprofos	1	0.067	0.05
8065-48-3	Systox, see Demeton			
93-76-5	2,4,5-Trichlorophen-oxyacetic acid (2,4,5,-T)	10	0.667	0.05
7440-25-7	Tantalum	5	0.333	0.25
3689-24-5	TEDP, see Sulfotep			

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
13494-80-9	Tellurium & Compounds as Te	0.1	0.007	0.005
7783-80-4	Tellurium hexafluoride as Te	0.2	0.013	0.01
3383-96-8	Temephos	10	0.667	0.5
107-49-3	TEPP (Tetraethyl-pyrophosphate)	0.05	0.003	0.0025
26140-60-3	Terphenyls	4.7	0.313	0.235
1335-88-2	Tetrachloronaphthalene	2	0.133	0.10
78-00-2	Tetraethyl Lead	0.1	0.007	0.005
597-64-8	Tetraethyltin as organic tin	0.1	0.007	0.005
109-99-9	Tetrahydrofuran	590	39.3	29.5
75-74-1	Tetramethyl lead, as Pb	0.15	0.01	0.0075
3333-52-6	Tetramethyl succinonitrile	3	0.2	0.15
509-14-8	Tetranitromethane	8	0.533	0.4
7722-88-5	Tetrasodium pyrophosphate	5	0.333	0.25
479-45-8	Tetryl	1.5	0.1	0.075
7440-28-0	Thallium, soluble Compounds, as Tl	0.1	0.007	0.005
96-69-5	4,4-Thiobis (6 tert, butyl-m-cresol)	10	0.667	0.5
68-11-1	Thioglycolic acid	4	0.267	0.2
7719-09-7	Thionyl chloride (CL)	4.9	0.0327	0.245
137-26-8	Thiram	5	0.333	0.25
7440-31-5	Tin - Including:			
7440-31-5	Metal	2	0.133	0.1
NA	Oxide & inorganic compounds, except SnH4, as Sn	2	0.133	0.1
NA	Organic compounds as Sn	0.1	0.007	0.005
108-88-3	Toluene (toluol)	375	25	18.75
584-84-9	Toluene-2,4-di-isocyanate (TDI)	0.04	0.003	0.002
10-41-54	p-Toluenesulfonic acid (ID)	n/a	0.067	0.05
126-73-8	Tributyl phosphate	2.2	0.147	0.11
76-03-9	Trichloroacetic acid	7	0.467	0.35
120-82-1	1,2,4-Trichlorobenzene (CL)	37	2.47	1.85
79-01-6	Trichloroethylene	269	17.93	13.45
1321-65-9	Trichloronaphthalene	5	0.333	0.25
76-06-2	Trichloronitromethane, See Chloropicrin			
95-95-4	2,4,5-Trichlorophenol (MA)	---	---	0.0016
96-18-4	l,2,3-Trichloropropane	60	4	3

CAS NUMBER	SUBSTANCE	OEL (mg/m3)	EL (lb/hr)	AAC (mg/m3)
121-44-8	Triethylamine	4.1	0.27	0.2
1582-09-8	Trifluralin (PL3)	---	7.7	1.15
552-30-7	Trimellitic anhydride	0.04	0.003	0.002
75-50-3	Trimethylamine	12	0.8	0.6
25551-13-7	Trimethyl benzene (mixed and individual isomers)	123	8.2	6.15
540-84-1	2,2,4-Trimethyl-pentane	350	23.3	17.5
121-45-9	Trimethyl phosphite	10	0.667	0.5
479-45-8	2,4,6-Trinitrophenyl-methylnitramine, see Tetryl			
78-30-8	Triorthocresyl phosphate	0.1	0.007	0.005
603-34-9	Triphenyl amine	5	0.333	0.25
115-86-6	Triphenyl phosphate	3	0.2	0.15
7440-33-7	Tungsten - Including:			
NA	Insoluble compounds	5	0.333	0.25
NA	Soluble compounds	1	0.067	0.05
8006-64-2	Turpentine	560	37.3	28
7440-61-1	Uranium (natural) Soluble & insoluble compounds as U	0.2	0.013	0.01
110-62-3	n-Valeraldehyde	175	11.7	8.75
1314-62-1	Vanadium, as V2O5 Respirable Dust & fume	0.05	0.003	0.0025
108-05-4	Vinyl acetate	35	2.3	1.75
25013-15-4	Vinyl toluene	240	16	12
8032-32-4	VM & P Naphtha	1370	91.3	68.5
81-81-2	Warfarin	0.1	0.007	0.005
1330-20-7	Xylene (o-, m-, p-isomers)	435	29	21.75
1477-55-0	m-Xylene a, a-diamine (CL)	0.1	0.0007	0.0005
1300-73-8	Xylidine	2.5	1.67	0.125
7440-65-5	Yttrium (Metal and compounds as Y)	1	0.067	0.05
7440-66-6	Zinc metal (ID)	--	0.667	0.5
7646-85-7	Zinc chloride fume	1	0.067	0.05
1314-13-2	Zinc oxide fume	5	0.333	0.05
1314-13-2	Zinc oxide dust	10	0.667	0.5
7440-67-7	Zirconium compounds as Zr	5	0.333	0.25

Note: ACGIH: American Conference of Government Industrial Hygienists; **CL**: Derived from ACGIH ceiling Limit UF = 10; **ID**. Idaho Division of Environmental Quality. Not OEL based; **LA**: From LA Dept. of Environmental Quality. Not OEL based eight (8) hour TWA; **MA**: From MA Dept. of Environmental Protection, Div. of Air Quality

Control. Not OEL based, annual averaging time, no UF; **MI**. From MI Dept. of Natural Resources, Air Quality Div. Based on toxicological data, annual averaging time, no UF.; **NY**: From New York Dept. of Conservation, Div. of Air Quality. Not OEL based, annual averaging. time no UF; **OEL**: Reference Occupational Exposure Level; **PL**: From Phil. Dept. of Air Management Services. Not OEL based, annual. averaging time no UF; **PL1**: From Phil. Dept. of Air Management Services. Unspecified OEL based, annual averaging time, UF=10; **PL2**: From Phil. Dept. of Air Management Services. Not OEL based annual averaging. time, UF=10; **PL3**: From Phil. Dept. of Air Management Services. Not OEL based, annual averaging. time, UF=1000.; **TWA**: Time Weighted Average; **UF**: Uncertainty Factor; **WA**: From Washington Dept. of Ecology, Air Programs. Acceptable Source Impact Level based. ( )

586. TOXIC AIR POLLUTANTS CARCINOGENIC INCREMENTS.
The screening emissions levels (EL) and acceptable ambient concentrations (AACC) for carcinogens are as provided in the following table. The AACC in this section are annual averages. ( )

CAS NUMBER	SUBSTANCE	URF	EL lb/hr	AACC ug/m3
75-07-0	Acetaldehyde	2.2E-06	3.0E-03	4.5E-01
79-06-1	Acrylamide	1.3E-03	5.1E-06	7.7E-04
107-13-1	Acrylonitrile	6.8E-05	9.8E-05	1.5E-02
309-00-2	Aldrin	4.9E-03	1.3E-06	2.0E-04
62-53-3	Aniline	7.4E-06	9.0E-04	1.4E-01
140-57-8	Aramite	7.1E-06	9.3E-04	1.4E-01
NA	Aroclor, all (PCB) (ID)	---	6.6E-05	1.0E-02
7440-38-2	Arsenic compounds	4.3E-03	1.5E-06	2.3E-04
1332-21-4	Asbestos (Fibers /M.L.)	2.3E-01	N/A	4.0E-06
71-43-2	Benzene	8.3E-06	8.0E-04	1.2E-01
92-87-5	Benzidine	6.7E-02	9.9E-08	1.5E-05
50-32-8	Benzo(a)pyrene	3.3E-03	2.0E-06	3.0E-04
7440-41-7	Beryllium & compounds	2.4E-04	2.8E-05	4.2E-03
106-99-0	1,3-Butadiene	2.8E-04	2.4E-05	3.6E-03
111-44-4	Bis (2-chloroethyl) ether	3.3E-04	2.0E-05	3.0E-03
542-88-1	Bis (chloromethyl) ether	6.2E-02	1.0E-07	1.6E-05
108-60-1	Bis (2-chloro-1-methyl- ethyl) ether	2.0E-05	3.3E-04	5.0E-02
117-81-7	Bis (2-ethylhexyl) phthalate	2.4E-07	2.8E-02	4.2E+00
7440-43-9	Cadmium and compounds	1.8E-03	3.7E-06	5.6E-04
56-23-5	Carbon tetrachloride	1.5E-05	4.4E-04	6.7E-02
57-74-9	Chlordane	3.7E-04	1.8E-04	2.7E-03
67-66-3	Chloroform	2.3E-05	2.8E-04	4.3E-02
18540-29-9	Chromium (VI) & compounds as Cr+6	1.2E-02	5.6E-07	8.3E-05
NA	Coal Tar Volitiles as benzene			
NA	Coke oven emissions	6.2E-04	1.1E-05	1.6E-03

CAS NUMBER	SUBSTANCE	URF	EL lb/hr	AACC ug/m3
8001-58-9	Creosote (ID) See coal tar volatiles as benzene extractables			
50-29-3	DDT (Dichlorodi phenyltrichloroethane)	9.7E-05	6.8E-05	1.0E-02
96-12-8	1,2-Dibromo-3-chloropropane	6.3E-03	1.0E-06	1.6E-04
75-34-3	1,1 dichloroethane	2.6E-05	2.5E-04	3.8E-02
107-06-2	1,2 dichloroethane	2.6E-05	2.5E-04	3.8E-02
75-35-4	1,1 dichloroethylene	5.0E-05	1.3E-04	2.0E-02
75-09-2	Dichloromethane (Methylenechloride)	4.1E-06	1.6E-03	2.4E-01
542-75-6	1,3 dichloropropene	4.0E-06	1.7E-03	2.5E-01
764-41-0	1,4-Dichloro-2-butene	2.6E-03	2.5E-06	3.8E-04
60-57-1	Dieldrin	4.6E-03	1.4E-06	2.1E-04
56-53-1	Diethylstilbestrol	1.4E-01	4.7E-08	7.1E-06
123-91-1	1,4 dioxane	1.4E-06	4.8E-03	7.1E-01
	Dioxin and Furans (2,3,7,8,TCDD & mixtures) Dioxin and Furan emissions are considered as one TAP and expressed as an equivalent emission of 2,3,7,8, TCDD based on the relative potency of the isomers in accordance with US EPA guidelines. U.S. EPA, (2010) Recommended Toxicity Equivalence Factors (TEFs) for Human Health Risk Assessments of 2,3,7,8-Tetrachlorod-ibenzo-p-dioxin and Dioxin-Like Compounds. Risk Assessment Forum, Washington, DC. EPA/600/R-10/005.			
122-66-7	1,2-Diphenylhydrazine	2.2E-04	3.0E-05	4.5E-03
106-89-8	Epichlorohydrin	1.2E-06	5.6E-03	8.3E-01
106-93-4	Ethylene dibromide	2.2E-04	3.0E-05	4.5E-03
75-21-8	Ethylene oxide	1.0E-04	6.7E-05	1.0E-02
50-00-0	Formaldehyde	1.3E-05	5.1E-04	7.7E-02
76-44-8	Heptachlor	1.3E-03	5.1E-06	7.7E-04
1024-57-3	Heptachlor Epoxide	2.6E-03	2.5E-06	3.5E-04
118-74-1	Hexachlorobenzene	4.9E-04	1.3E-05	2.0E-03
87-68-3	Hexachlorobutadiene	2.0E-05	3.3E-04	5.0E-02
	Hexachlorocyclo-hexane, Technical	5.1E-04	1.3E-05	1.9E-03
319-84-6	Hexachlorocyclohexane (Lindane) Alpha (BHC)	1.8E-03	3.7E-06	5.6E-04
319-85-7	Hexachlorocyclohexane (Lindane) Beta (BHC)	5.3E-04	1.3E-05	1.8E-03
58-89-9	Hexachlorocyclohexane (Lindane) Gamma (BHC)	3.8E-04	1.7E-05	2.6E-03
67-72-1	Hexachloroethane	4.0E-06	1.7E-03	2.5E-01
302-01-2	Hydrazine	2.9E-03	2.3E-06	3.4E-04
10034-93-2	Hydrazine Sulfate	2.9E-03	2.2E-06	3.5E-04

CAS NUMBER	SUBSTANCE	URF	EL lb/hr	AACC ug/m3
56-49-5	3-methylcholanthrene	2.7E-03	2.5E-06	3.7E-04
75-09-2	Methylene Chloride	4.1E-06	1.6E-03	2.4E-01
74-87-3	Methyl chloride	3.6E-06	1.9E-03	2.8E-01
101-14-4	4,4-Methylene bis(2-Chloroaniline)	4.7E-05	1.4E-04	2.1E-02
60-34-4	Methyl hydrazine	3.1E-04	2.2E-05	3.2E-03
7440-02-0	Nickel	2.4E-04	2.7E-05	4.2E-03
12035-72-2	Nickel Subsulfide	4.8E-04	1.4E-05	2.1E-02
7440-02-0	Nickel Refinery Dust	2.4E-04	2.8E-05	4.2E-02
79-46-9	2-Nitropropane	2.7E-02	2.5E-07	3.7E-05
55-18-5	N-Nitrosodiethylamine (diethylnitrosoamine) (DEN)	4.3E-02	1.5E-07	2.3E-05
62-75-9	N-Nitrosodimethylamine	1.4E-02	4.8E-07	7.1E-05
924-16-3	N-Nitrosodi-n-butylamine	1.6E-03	4.1E-06	6.3E-04
930-55-2	N-Nitrosopyrolidine	6.1E-04	1.1E-05	1.6E-03
684-93-5	N-Nitroso-N-methylurea (NMU)	3.5E-01	1.9E-08	2.9E-06
82-68-8	Pentachloronitrobenzene	7.3E-05	9.1E-05	1.4E-02
127-18-4	Perchloroethylene (see tetrachloroethylene)			
NA	Polyaromatic Hydrocarbons (except 7-PAH group)	7.3E-05	9.1E-05	1.4E-02
	(Polycyclic Organic Matter or 7-PAH group) For emissions of the 7-PAH group, the following PAHs are considered together as one TAP, equivalent in potency to benzo(a)pyrene: benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenzo(a,h)anthracene, chrysene, indenol(1,2,3,-cd)pyrene, benzo(a)pyrene. (WA)			
23950-58-5	Promanide	4.6E-06	1.5E-03	2.2E-01
50-55-5	Reserpine	3.0E-03	2.2E-06	3.3E-04
1746-01-6	2,3,7,8,-Tetrachlorodibenzo-p-dioxin (2,3,7,8, -TCDD)	4.5.E+01	1.5E-10	2.2E-08
NA	Soots and Tars (ID) See coal tar volatiles as benzene extractables.			
79-34-5	1,1,2,2,Tetrachloro-ethane	5.8E-05	1.1E-05	1.7E-02
127-18-4	Tetrachloroethylene	4.8E-07	1.3E-02	2.1E+00
79-00-5	1,1,2 - trichloroethane	1.6E-05	4.2E-04	6.2E-02
62-56-6	Thiourea	5.5E-04	1.2E-05	1.8E-03
8001-35-2	Toxaphene	3.2E-04	2.0E-05	3.0E-03
79-01-6	Trichloroethylene	1.3E-06	5.1E-04	7.7E-01
88-06-2	2,4,6 - Trichlorophenol	5.7E-06	1.2E-03	1.8E-01
75-01-4	Vinyl chloride	7.1E-06	9.4E-04	1.4E-01

Note: ID: Idaho Division of Environmental Quality. Not OEL based; **URF**: Unit Risk Factor from EPA. **WA**: From Washington Dept. of Ecology, Air Programs. Acceptable Source Impact Level based. ( )

587. -- 591. (RESERVED)

592. STAGE 1 VAPOR COLLECTION.
Sections 592 through 598 set requirements for Stage 1 vapor collection systems. Stage 1 vapor collection is used during the refueling of underground gasoline storage tanks to reduce hydrocarbon emissions. Vapors in the tank, which are displaced by the incoming gasoline, are routed through a hose into the gasoline cargo tank and returned to the terminal for processing. Section 599 sets the requirements for gasoline cargo tanks that deliver gasoline to those required to install and operate Stage 1 vapor collection systems. These sections apply to gasoline dispensing facilities (GDF) and gasoline cargo tanks in Ada and Canyon Counties only. Nothing in these rules is intended to supersede or render inapplicable any federal, state, or local laws, including, but not limited to 40 CFR Part 63, Subpart CCCCCC. ( )

593. AFFECTED EQUIPMENT OR PROCESSES.

01. Applicability. Sections 592 through 598 apply to transfers of gasoline to underground storage tanks with a tank capacity of ten thousand (10,000) gallons and not otherwise subject to 40 CFR 63.11118. The emission sources include the underground gasoline storage tanks and associated equipment components in vapor or liquid gasoline service at new, reconstructed, or existing GDFs. Pressure/vacuum vents on underground gasoline storage tanks and the equipment necessary to unload product from cargo tanks into the storage tanks at GDFs are covered emission sources. ( )

02. New Sources. A source is a new source if construction commenced on the source after April 1, 2009. ( )

03. Reconstructed Sources. A source is reconstructed if meeting the criteria for reconstruction as defined in 40 CFR 63.2, incorporated by reference in Section 107. ( )

04. Existing Sources. A source is an existing source if it is not new or reconstructed. ( )

594. COMPLIANCE DATES.
For a new or reconstructed source, the owner or operator must comply with the standards in Sections 595 and 596 upon startup. Owners or operators of new sources must install dual point systems. ( )

595. SUBMERGED FILL REQUIREMENTS.
The owner or operator must only load gasoline into underground storage tanks at the facility by utilizing submerged filling. ( )

01. Installed On or Before November 9, 2006. Submerged fill pipes installed on or before November 9, 2006, must be no more than twelve (12) inches from the bottom of the storage tank. ( )

02. Installed After November 9, 2006. Submerged fill pipes installed after November 9, 2006, must be no more than six (6) inches from the bottom of the storage tank. ( )

596. VAPOR BALANCE REQUIREMENTS.
The owner or operator of a GDF must comply with the following: ( )

01. Loading. When loading an underground gasoline storage tank equipped with a vapor balance system, connect and ensure the proper operation of the vapor balance system whenever gasoline is being loaded. ( )

02. Maintenance. Maintain all equipment associated with the vapor balance system to be vapor tight and in good working order. ( )

03. Inspection. Inspect the vapor balance equipment on an annual basis to discover potential or actual

equipment failures. A log form is available on the Department's website at http://www.deq.idaho.gov. ( )

04. Repair. Replace, repair or modify any worn or ineffective component or design element within twenty-four (24) hours to ensure the vapor-tight integrity and efficiency of the vapor balance system. If repair parts must be ordered, either a written or verbal order for those parts must be initiated within two (2) working days of detecting such a leak. Such repair parts must be installed within five (5) working days after receipt. ( )

597. TESTING AND MONITORING REQUIREMENTS.
The owner or operator of a GDF must comply with the following requirements within ninety (90) days of registration under Section 598 and every three (3) years thereafter. ( )

01. Testing. ( )

a. The owner or operator must demonstrate compliance in accordance with 40 CFR 63.11120(a)(1). ( )

b. The owner or operator must demonstrate compliance with the static pressure performance requirement, specified in item 1(h) of Table 1 to 40 CFR Part 63, Subpart CCCCCC, for the vapor balance system by conducting a static pressure test on the underground gasoline storage tanks using the test methods identified in paragraph 597.01.b.i. or 597.01.b.ii. in accordance with 40 CFR 63.11120(a)(2). ( )

02. Alternative Testing. The owner or operator of a GDF, choosing, under the provisions of 40 CFR 63.6(g), to use a vapor balance system other than that described in Table 1 to 40 CFR Part 63, Subpart CCCCCC, must demonstrate to the Department the equivalency of their vapor balance system to that described in Table 1 to 40 CFR Part 63, Subpart CCCCCC in accordance with 40 CFR 63.11120(b). ( )

598. REGISTRATION, RECORDKEEPING, AND REPORTING REQUIREMENTS.

01. Registration. ( )

a. Any GDF subject to these rules must: ( )

i. Within thirty (30) days of installation of the Stage 1 vapor collection system, the owner or operator of the GDF must submit to the Department a registration that provides, at a minimum, the operation name and address, signature of the owner or operator in accordance with Section 123, the location of records and reports required by Subsections 598.02 and 598.03 (including contact person's name, address and telephone number), the number of underground gasoline storage tanks, the number of gasoline tank pipe vents, and the date of completion of installation of the Stage 1 vapor collection system and pressure/vacuum relief valve; and ( )

ii. The registration certification must be displayed at the GDF. ( )

b. Upon modification of an existing Stage 1 vapor collection system or pressure/vacuum relief valve, the owner or operator of the GDF must submit to the Department a registration that details the changes to the information provided in the previous registration and includes the signature of the owner or operator. The registration must be submitted to the Department within thirty (30) days after completion of such modification. ( )

c. A new registration must be submitted to the Department within thirty (30) days after any change in ownership of the GDF. ( )

02. Recordkeeping Requirements. ( )

a. Each owner or operator must keep the following records: ( )

i. Records of all tests performed under Section 597; ( )

ii. Records related to the operation and maintenance of vapor balance equipment required under Section 596. Any vapor balance component defect must be logged and tracked by station personnel on a monthly

basis using forms provided by the Department or a reasonable facsimile; and ( )

iii. Records of permanent changes made at the GDF and vapor balance equipment which may affect emissions. ( )

b. Records required under 598.02.a. must be kept for a period of five (5) years and must be made available for inspection by the Department upon request. ( )

03. Reporting Requirements. Each owner or operator subject to the management practices in Section 596 must report to the Department the results of all volumetric efficiency tests required under Section 597. Reports submitted under these rules must be submitted within thirty (30) days of the completion of the performance testing. ( )

599. GASOLINE CARGO TANKS.

01. Prohibitions. After a Stage 1 vapor collection system is installed and operating, owners or operators of gasoline cargo tanks that unload gasoline into an underground gasoline storage tank with a capacity of ten thousand (10,000) gallons or more, in Ada or Canyon Counties, must comply with Table 2 to 40 CFR Part 63, Subpart CCCCCC, incorporated by reference in Section 107. ( )

02. Recordkeeping and Reporting. ( )

a. The owner or operator of the gasoline cargo tank subject to Section 599 must maintain records of all certification testing and repairs. The records must identify the gasoline cargo tank; the date of the test or repair; and if applicable, the type of repair and the date of retest. The records must be maintained in a legible, readily available condition for at least two (2) years after the date of testing or repair was completed and must be available for inspection by the Department upon request. ( )

b. Copies of all tests required under Subsection 599.01 must be submitted to the Department within thirty (30) days of certification testing. ( )

600. RULES FOR CONTROL OF OPEN BURNING.
Sections 600 through 624 establish rules to protect human health and the environment from air pollutants resulting from open burning as well as to reduce the visibility impairment in mandatory Class I Federal Areas in accordance with the regional haze long-term strategy referenced at Section 667. ( )

601. FIRE PERMITS, HAZARDOUS MATERIALS, AND LIABILITY.
Compliance with the provisions of Sections 600 through 624 does not exempt or excuse any person from complying with applicable laws and ordinances of other jurisdictions responsible for fire control or hazardous material disposal or from liability for damages or injuries which may result from open burning. ( )

602. NONPREEMPTION OF OTHER JURISDICTIONS.
The provisions of Sections 600 through 624 are not intended to interfere with the rights of any city, county or other governmental entities or agencies to provide equal or more stringent control of open burning within their respective jurisdictions. ( )

603. GENERAL REQUIREMENTS.
No person may allow, cause or permit any open burning operation unless the materials burned fall within an allowable category of open burning set forth in Sections 606-624, and do not contain any of the following prohibited materials listed in 603.01. ( )

01. Prohibited Materials. The fires must not include any of the following prohibited materials: ( )

a. Garbage, as defined in IDAPA 58.01.06 “Solid Waste Management Rules”. ( )

b. Dead animals, animal parts, or animal wastes (feces, feathers, litter, etc.) except as provided in Section 616. ( )

c. Motor vehicles, or parts, or any materials resulting from a salvage operation, defined as 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. ( )

d. Tires or other rubber materials or products. ( )

e. Plastics. ( )

f. Asphalt or composition roofing or any other asphaltic material or product. ( )

g. Tar, tar paper, waste or heavy petroleum products, or paints. ( )

h. Treated lumber or timbers coated with preservatives, paints or other protective material ( )

i. Trade waste, defined as 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, except as specifically allowed under Sections 600 through 624. ( )

j. Insulated wire. ( )

k. Pathogenic wastes. ( )

l. Hazardous wastes as classified according to IDAPA 58.01.05, "Rules and Standards for Hazardous Waste". ( )

02. Air Quality Episodes. No person may allow, cause or permit any open burning during any level of an air quality episode declared by the Department in accordance with Sections 550 through 562. ( )

03. Emergency Authority. In accordance with Title 39, Chapter 1, Idaho Code, the Department has the authority to require immediate abatement of any open burning in cases of emergency requiring immediate action to protect human health or safety. ( )

604. -- 605. (RESERVED)

606. CATEGORIES OF ALLOWABLE BURNING.
Sections 606 through 624 establish categories of allowable open burning and applicable requirements. ( )

607. RECREATIONAL AND WARMING FIRES.
Fires used for the preparation of food or for recreational purposes (e.g. campfires, ceremonial fires, and barbecues), or small fires set for handwarming purposes. A small fire is defined as 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. ( )

608. WEED CONTROL FIRES.
Fires used for the purpose of weed abatement such as along fence lines, canal banks, rock piles and ditch banks. ( )

609. TRAINING FIRES.
Fires used by fire and land management agencies as training for fire suppression and firefighting techniques, or to display certain fire ecology or fire behavior effects. Training facilities must notify the Department prior to igniting any training fires. Training fires must not be allowed to smolder after the training session has terminated. Training fires are exempt from Subsections 603.01.c. and 603.01.e. through 603.01.j. ( )

610. (RESERVED)

611. RESIDENTIAL YARD WASTE FIRES.
Fire used for the disposal of yard waste, as defined in the IDAPA 58.01.06, "Solid Waste Management Rules," at residential locations so long as the burning is conducted on the property where the yard waste was generated and not prohibited by local ordinances or rules. ( )

612. SOLID WASTE FACILITY FIRES.
Fire used for the disposal of solid waste at any solid waste landfill disposal site or facility only if conducted in accordance with IDAPA 58.01.06, "Solid Waste Management Rules," or Chapter 74, Title 39, Idaho Code. ( )

613. ORCHARD FIRES.
Fire used for the disposal of orchard clippings when the burning is conducted on the property where the clippings were generated. ( )

614. PRESCRIBED FIRE.
Prescribed fire when the provisions of Section 614 are met. ( )

01. Prescribed Fire is defined as:
The controlled application of fire to wildland fuels in either their natural or modified state, under conditions of weather, fuel moisture and soil moisture that allow the fire to be confined to a predetermined area while producing the intensity of heat and rate of spread required to meet planned objectives, including: ( )

a. Fire hazard reduction; ( )

b. The control of pests, insects, or diseases; ( )

c. The promotion of range forage improvements; ( )

d. The perpetuation of natural ecosystems; ( )

e. The disposal of slash and woody debris resulting from any land management activity such as; logging operation, the clearing of rights of way, a land clearing operation, or a driftwood collection system; ( )

f. The preparation of planting and seeding sites for forest regeneration; and ( )

g. Other accepted natural resource management purposes. ( )

02. Burning Permits or Prescribed Fire Plans.

a. Whenever a burning permit or prescribed fire plan is required by the Department of Lands, U.S.D.A. Forest Service, or any other state or federal agency responsible for land management, any person who conducts or allows prescribed fire must meet all permit and/or plan conditions and terms which control smoke. ( )

b. The Department will seek interagency agreements to assure permits or plans issued by agencies referred to in Subsection 614.01.a. provide adequate consideration for controlling smoke from prescribed fire. ( )

03. Smoke Management Plans for Prescribed Fire. ( )

a. Whenever a permit or plan is not required by the Department of Lands, U.S.D.A. Forest Service, or any other state or federal agency responsible for land management, any person who conducts or allows prescribed fire must meet all conditions set forth in a Smoke Management Plan for Prescribed Fire. ( )

b. The Department will develop and put into effect a Smoke Management Plan for Prescribed Fire consistent with the purpose of Sections 600 through 616. ( )

04. Rights-of-Way Fires. The open burning of woody debris generated during the clearing of rights of

way must be open burned according to Section 38-125, Idaho Code and Sections 606 through 616 of these rules. ( )

615. DANGEROUS MATERIAL FIRES.
Fires ignited under the direction of a public or military fire chief to dispose of materials that in their current condition present a danger to life, valuable property or the public welfare, or to prevent a fire hazard when no practical alternative method of disposal or removal exists. ( )

616. INFECTIOUS WASTE BURNING.
Fires used to dispose of diseased animals or infested material, upon the order of and under the direction of a public health officer, are exempt from Subsection 603.01.k. ( )

617. CROP RESIDUE DISPOSAL.
Fire used to dispose of crop residue remaining in fields where the crops were grown if conducted in accordance with Section 39-114, Idaho Code, and Sections 618 through 624. ( )

618. PERMIT BY RULE.
No person may conduct an open burn of crop residue or pasture without obtaining the applicable permit by rule. Those persons applying for a spot burn, baled agricultural residue burn, or propane flaming permit must comply with the provisions in Section 624. Registration for a permit by rule must be made using forms furnished by the Department, or by other means prescribed by the Department. ( )

619. REGISTRATION.
Any person applying to burn crop residue must annually provide the following registration information to the Department at least thirty (30) days prior to the date provided in 619.05: ( )

01. Location of Requested Burn. The legal description of the location of the requested burn, using longitude and latitude coordinates; ( )

02. Applicant Information. Name, mailing address, and telephone number of the applicant, and the person who will be responsible for conducting the proposed burning of crop residue and the portable form of communication referenced in Subsection 622.01.c. of this rule; ( )

03. Type and Acreage of Crop Residue Requested to be Burned. The crop type and total area over which burning will be conducted (acres); ( )

04. Preventive Measures. A description of the measures that will be taken to prevent escaped burns or withhold additional material such that the fire burns down, including but not limited to, the availability of water and plowed firebreaks; and ( )

05. Date of Burning. The anticipated date(s) when the field will be ready and requested to be burned. ( )

620. BURN FEE.

01. Burn Fee. The burn fee in Section 39-114, Idaho Code, must be paid in its entirety within thirty (30) days following the receipt of the annual burn fee invoice. See also Subsection 624.02.a. for registration and fee requirements for burning under a spot and baled agricultural residue burn permit. Information for making payments is available at http://www.deq.idaho.gov. ( )

02. Effect of Delinquent Fee Payment. The Department will not accept or process a registration for a permit by rule to burn for any person or property location having burn fees delinquent, in full or in part. ( )

621. BURN APPROVAL.

01. Operating Guide. The Department will develop a Crop Residue Operating Guide to assist in the decision process for approving burns. ( )

02. Permittee Approval Process. The permittee must obtain the Registration Receipt and Initial Permit Requirements from the Department at least twelve (12) hours in advance of the burn. The permittee must obtain final approval to burn from the Department the morning of the requested burn. ( )

03. Burn Approval Criteria. To approve a permittee's request to burn, the Department must determine that ambient air quality levels do not exceed ninety percent (90%) of the ozone national ambient air quality standard (NAAQS) and seventy-five percent (75%) of the level of any other NAAQS on any day and are not projected to exceed such level over the next twenty-four (24) hours, and ambient air quality levels have not reached, and are not forecasted to reach and persist at, eighty percent (80%) of the one (1) hour action criteria for particulate matter under Section 556. In making this determination, the Department will consider the following: ( )

a. Expected emissions from all crop residue burns requested for the same dates; ( )

b. The proximity of other burns and potential emission sources within the area to be affected by the requested burn; ( )

c. Moisture content of the crop residue to be burned; ( )

d. Acreage, crop type, and fuel characteristics of the crop residue to be burned; ( )

e. Current and forecast meteorological conditions in the area of the requested burn; ( )

f. The proximity of the requested burn to institutions with sensitive populations, including public schools while in session; hospitals; residential health care facilities for children, the elderly or infirm; and other institutions with sensitive populations as approved by the Department. The Department will not approve a burn if conditions are such that institutions with sensitive populations will be adversely impacted or when the plume is predicted to impact such institutions; ( )

g. Proximity to public roadways; ( )

h. Proximity to airports; and ( )

i. Any other factors relevant to preventing exceedances of the air quality concentrations of Section 621. ( )

04. Notification of Approval. The Department will post all crop residue approvals on its website. The burn approvals will include written notification of the approval and any specific conditions under which the burn is approved. Special conditions may include, but are not limited to: ( )

a. Conditions for burns near institutions with sensitive populations; ( )

b. The requirement to withhold additional material such that the fire burns down if the Department determines pollutant concentrations reach the levels in Subsection 621.03 of this rule; ( )

c. Conditions to ensure the burn does not create a hazard for travel on a public roadway; and ( )

d. The requirement to consult with the Department to determine actions to be taken if conditions at the burn site fail to satisfy the conditions specified in the notice of approval to burn. ( )

622. GENERAL PROVISIONS.

01. Burn Provisions. All persons conducting crop residue burning must comply with the following: ( )

a. Burning of crop residue must not be conducted on weekends, federal or state holidays, or after sunset or before sunrise; ( )

b. Burning of crop residue must not be conducted unless the Department has designated that day a burn day and the permittee has received individual approval in accordance with Subsection 621.02; ( )

c. The person conducting the burn must have in their possession a portable form of communication such as a cellular phone or radio of compatible frequency with the Department in order to receive burn approval information or information that might require measures to withhold additional material such that the fire burns down; ( )

d. Crop residue must remain and be burned in the field where it was grown; ( )

e. When required by the conditions of the approval to burn, the permittee burning in proximity to institutions with sensitive populations must immediately extinguish the fire or withhold additional material such that the fire burns down, if the Department determines the burn is having or will have an adverse impact on such institutions; ( )

f. All persons burning crop residue must complete a grower crop residue burning training provided by the Department prior to their first burn and at least once every five (5) years thereafter; ( )

h. The use of reburn machines, propane flamers, or other portable devices to ignite or reignite a field for the purposes of crop residue burning is considered an allowable form of open burning; ( )

j. All persons burning crop residue must submit a burn report to the Department that includes the following: the date burning was conducted, actual number and location of acres burned, and other information as required by the Department. The Department may restrict further burning by a permittee until burn reports are submitted; and ( )

k. The open burning of crop residue must be conducted in accordance with the specific conditions in the permittee's burn approval. ( )

02. Annual Report. The Department will develop an annual report that will include, at a minimum, an analysis of the causes of each exceedance of a limitation in Section 621 of this rule, if any, and an assessment of the circumstances associated with any reported endangerment to human health associated with a burn. The report will include any proposed revisions to these rules or the Crop Residue Operating Guide deemed necessary to prevent future exceedances. ( )

03. Advisory Committee. The Department will assemble an advisory committee consisting of representatives from environmental organizations, farming organizations, health organizations, tribal organizations, the Idaho State Department of Agriculture, the Idaho Department of Environmental Quality, and others to discuss open burning of crop residue issues. ( )

623. PUBLIC NOTIFICATION.

01. Designation of Burn Days. The Department will designate for a given county or airshed within a county burn or no-burn days. ( )

02. Posting on Website. The Department will post daily on its website: ( )

a. Whether a given day is a burn or no-burn day; ( )

b. The location and number of acres permitted to be burned; ( )

c. Meteorological conditions and any real time ambient air quality monitoring data; and ( )

d. A toll-free number to receive requests for information ( )

03. E-Mail Update Service. The Department will provide an opportunity for interested persons to sign

up to receive automatic e-mail updates for information regarding the open burning of crop residue. ( )

624. SPOT AND BALED CROP RESIDUE BURN AND PROPANE FLAMING REQUIREMENTS.

01. Applicability. ( )

a. Spot Burn. A spot burn includes no more than one (1) acre of evenly distributed crop residue or two (2) tons of piled crop residue. The open burning of weed patches, spots of heavy residue, equipment plugs and dumps, pivot corners of fields, and pastures may constitute a spot burn. Spot burn does not include the open burning of wind rows. ( )

b. Baled Crop Residue Burn. An open burn used to dispose of broken, mildewed, diseased, or otherwise pest-ridden bales still in the field where they were generated. ( )

c. Propane Flaming. The use of flame-generating equipment to briefly apply flame and/or heat to the topsoil of a cultivated field of pre-emerged or plowed-under crop residue with less than five hundred fifty (550) pounds of burnable, non-green residue per acre in order to control diseases, insects, pests, and weed emergence. ( )

02. Spot and Baled Crop Residue Burn Permit. ( )

a. Any person applying for a spot and baled crop residue burn permit under Section 624 must: ( )

i. Provide the registration information listed in Subsections 619.01 and 619.02; and ( )

ii. Pay a nonrefundable fee of twenty dollars ($20) to the Department (see Section 620) at least fourteen (14) days prior to the date the applicant proposes to conduct the first burn of the calendar year. ( )

b. A spot and baled crop residue burn permit is valid for the calendar year in which it is issued and permits: ( )

i. Burning of a cumulative total of no more than ten (10) acres of spots and/or equivalent piled or baled crop residue during the year; and ( )

ii. No more than one (1) acre of spots and/or equivalent piled or baled crop residue per day. Two (2) tons of piled or baled crop residue is assumed to be equivalent to one (1) acre. ( )

03. Propane Flaming. Persons conducting propane flaming as defined under Subsection 624.01.c. must comply with the applicable provisions in Subsections 624.04 and 624.05. ( )

04. General Provisions. All persons intending to burn under Section 624 must comply with the provisions of Subsections 622.01.c., 622.01.d., 622.01.f., through 622.01.i., and 622.01.k. in addition to the following: ( )

a. The permittee is responsible to ensure that adequate measures are taken so the burn does not create a hazard for travel on a public roadway. ( )

b. Burning is not allowed if the burn location is within three (3) miles of an institution with a sensitive population and the surface wind speed is greater than twelve (12) miles per hour or if the smoke is adversely impacting or is expected to adversely impact an institution with a sensitive population. ( )

c. Burning must not be conducted unless the Department has designated that day a burn day, which for purposes of Section 624 may include weekends and holidays, and the permittee burns within the burn window provided on the Department's website. Spot and baled crop residue burns must not smolder and create smoke outside of the designated time period burning is allowed. ( )

05. Recordkeeping. Permittees must record the date, time frame, type of burn, type of crop, and amount burned on the date of the burn. Records of such burns must be retained for two (2) years and made available to the Department upon request. ( )

625. VISIBLE EMISSIONS.
A person must 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 this section. ( )

01. Exemptions. The provisions of this section will not apply to: ( )

a. Kraft Process Lime Kilns, if operating prior to January 24, 1969; or ( )

b. Carbon Monoxide Flare Pits on Elemental Phosphorous Furnaces, if operating prior to January 24, 1969; or ( )

c. Liquid Phosphorous Loading Operations, if operating prior to January 24, 1969; or ( )

d. Kraft Process Recovery Furnaces; or ( )

e. Calcining Operations Utilizing an Electrostatic Precipitator to Control Emissions, if operating prior to January 24, 1969. ( )

02. Standards for Exempted Sources. For sources exempted from the provisions of this section, a person must 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 is greater than forty percent (40%) opacity as determined by this section. ( )

03. Exception. The provisions of this section do 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. ( )

04. Test Methods and Procedures. The appropriate test method under this section is EPA Method 9 (contained in 40 CFR Part 60) with the method of calculating opacity exceedances altered as follows: ( )

a. Opacity evaluations must be conducted using forms available from the Department or similar forms approved by the Department. ( )

b. Opacity must 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 Procedures Manual for Air Pollution Control, Section II (Evaluation of Visible Emissions Manual), September 1986. ( )

c. Sources subject to New Source Performance Standards must calculate opacity as detailed above and as specified in 40 CFR Part 60. ( )

05. Applicability. Section 625 does not apply to the open burning of crop residue. ( )

626. -- 649. (RESERVED)

650. RULES FOR CONTROL OF FUGITIVE DUST.
The purpose of Sections 650 through 652 is to require that all reasonable precautions be taken to prevent the generation of fugitive dust defined as fugitive emissions composed of particulate matter. ( )

651. GENERAL RULES.
All reasonable precautions must be taken to prevent particulate matter from becoming airborne. In determining what is reasonable, consideration will be given to factors such as the proximity of dust emitting operations to human

habitations and/or activities, the proximity to mandatory Class I Federal Areas and atmospheric conditions that might affect the movement of particulate matter. Some of the reasonable precautions may include, but are not limited to, the following: ( )

01. Use of Water or Chemicals. Use, where practical, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land. ( )

02. Application of Dust Suppressants. Application, where practical, of asphalt, oil, water or suitable chemicals to, or covering of dirt roads, material stockpiles, and other surfaces that can create dust. ( )

03. Use of Control Equipment. Installation and use, where practical, of hoods, fans and fabric filters or equivalent systems to enclose and vent the handling of dusty materials. Adequate containment methods should be employed during sandblasting or other operations. ( )

04. Covering of Trucks. Covering, when practical, open bodied trucks transporting materials likely to give rise to airborne dusts. ( )

05. Paving. Paving of roadways and their maintenance in a clean condition, where practical. ( )

06. Removal of Materials. Prompt removal of earth or other stored material from streets, where practical. ( )

652. AGRICULTURAL ACTIVITIES.
For agricultural activity purposes, operating in conformance with generally recognized agricultural practices constitutes reasonable control of fugitive dust. For the purpose of Section 652: ( )

01. Agricultural Activity. An "agricultural activity" means any activity that is exempt from the requirement to obtain a permit to construct under Subsection 222.02.f., wherein "agricultural activities and services" is defined in Section 007, that occurs in connection with the production of agricultural products for food, fiber, fuel, feed and other lawful purposes, and including, but not limited to: ( )

a. Preparing land for agricultural production; ( )

b. Applying or handling pesticides herbicides, or other chemicals, compounds or substances labeled for insects, pests, crops, weeds, water or soil; ( )

c. Planting, irrigating, growing, fertilizing, harvesting or producing agricultural, horticultural, floricultural and viticulture crops, fruits and vegetable products, field grains, seeds, hay, sod and nursery stock, and other plant products, plant by-products, plant waste and animal compost; ( )

d. Breeding, hatching, raising, producing, feeding and keeping livestock, dairy animals, swine, fur-bearing animals, poultry, eggs, fish and other aquatic species, and other animals, animal products and animal by-products, animal waste, animal compost, and bees, bee products and bee by-products; ( )

e. Transporting agricultural products to or from an agricultural facility; ( )

f. Grinding, chopping, cubing, or any other means of preparing or converting a commodity for animal feed; and ( )

g. Piling, stacking or other means of storing commodities outdoors. ( )

02. Generally Recognized Agricultural Practices. "Generally recognized agricultural practices" means economically feasible practices that are customary among or appropriate to farms and ranches of a similar nature in the local area. In determining whether an agricultural activity is consistent with generally recognized agricultural practices, the Idaho Department of Environmental Quality will consult with the Idaho Department of Agriculture. ( )

653. -- 664. (RESERVED)

665. REGIONAL HAZE RULES.
Sections 665 through 667 address regional haze visibility impairment in mandatory Class I Federal Areas in accordance with 40 CFR 51.301, 307, and 308 incorporated by reference in Section 107. ( )

666. REASONABLE PROGRESS GOALS.
The Department will establish reasonable progress goals expressed in deciviews for each mandatory Class I Federal Area located within Idaho. ( )

667. LONG-TERM STRATEGY FOR REGIONAL HAZE.
The Department will submit to EPA a long-term strategy that meets the requirements in 40 CFR 51.308(d)(3) and 308(f)(2). ( )

668. -- 674. (RESERVED)

675. FUEL BURNING EQUIPMENT -- PARTICULATE MATTER.
Sections 675 through 681 establish particulate matter emission standards for fuel burning equipment. ( )

676. STANDARDS FOR NEW SOURCES.
A person must not discharge into the atmosphere from any fuel burning equipment with a maximum rated input of ten (10) million BTU's per hour or more, and commencing operation on or after October 1, 1979, particulate matter in excess of the concentrations shown in the following table:

FUEL TYPE	ALLOWABLE PARTICULATE gr/dscf	EMISSIONS Oxygen
Gas	.015	3%
Liquid	.050	3%
Coal	.050	8%
Wood Product	.080	8%

The effluent gas volume must be corrected to the oxygen concentration shown. ( )

677. STANDARDS FOR MINOR AND EXISTING SOURCES.
A person must not discharge into the atmosphere from any fuel burning equipment in operation prior to October 1, 1979, or with a maximum rated input of less than ten (10) million BTU per hour, particulate matter in excess of the concentrations shown in the following table:

FUEL TYPE	ALLOWABLE PARTICULATE gr/dscf	EMISSIONS Oxygen
Gas	.015	3%
Liquid	.050	3%
Coal	.100	8%
Wood Product	.200	8%

The effluent gas volume must be corrected to the oxygen concentration shown. ( )

678. COMBINATIONS OF FUELS.
When two (2) or more types of fuel are burned concurrently, the allowable emission are determined by proportioning the gross heat input and emission standards for each fuel. ( )

679. AVERAGING PERIOD.

For purposes of Sections 675 through 680, emissions are averaged according to the following, whichever is the lesser period of time: ( )

01. One Cycle. One (1) complete cycle of operation; or ( )

02. One Hour. One (1) hour of operation representing worst-case conditions for the emission of particulate matter. ( )

680. ALTITUDE CORRECTION.
For purposes of Sections 675 through 680, standard conditions must be adjusted for the altitude of the source by subtracting one-tenth (0.10) of an inch of mercury for each one hundred (100) feet above sea level from the standard atmospheric pressure at sea level of twenty-nine and ninety-two one hundredths (29.92) inches of mercury. ( )

681. TEST METHODS AND PROCEDURES.
The appropriate test method under Sections 675 through 680 is EPA Method 5 contained in 40 CFR Part 60 or such comparable and equivalent method approved in accordance with Subsection 157.02.d. Test methods and procedures must also comply with Section 157. ( )

682. -- 699. (RESERVED)

700. PARTICULATE MATTER -- PROCESS WEIGHT LIMITATIONS.

01. Particulate Matter Emission Limitations. Sections 700 through 703 establish particulate matter emission limitations for process equipment and include the following definitions: ( )

a. Process weight is defined as the total weight of all materials introduced into any source operation that 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 that occurs naturally in the feed material is considered part of the process weight. ( )

b. Process weight rate is established as follows: ( )

i. For continuous or long-run steady-state source operations, the total 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; and ( )

ii. For cyclical or batch source operations, the total 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 applies. ( )

02. Minimum Allowable Emission. Notwithstanding the provisions of Sections 701 and 702, no source will be required to meet an emission limit of less than one (1) pound per hour. ( )

03. Averaging Period. For the purposes of Sections 701 through 703, emissions must be averaged according to the following, whichever is the lesser period of time: ( )

a. One (1) complete cycle of operation; or ( )

b. One (1) hour of operation representing worst-case conditions for the emissions of particulate matter. ( )

04. Test Methods and Procedures. The appropriate test method under Sections 700 thought 703 is EPA Method 5 contained in 40 CFR Part 60 or such comparable and equivalent methods approved in accordance with Subsection 157.02.d. Test methods and procedures must comply with Section 157. ( )

701. PARTICULATE MATTER -- NEW EQUIPMENT PROCESS WEIGHT LIMITATIONS.

01. General Restrictions. No person may emit into the atmosphere from any 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. ( )

a. If PW is less than 9,250 pounds per hour, ( )
E = 0.045(PW)0.60

b. If PW is equal to or greater than 9,250 pounds per hour, ( )
E = 1.10(PW)0.25

02. Exemption. The provisions of Section 701 do not apply to fuel burning equipment. ( )

03. Emission Standards. The following table illustrates the emission standards set forth in Section 701.

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

( )

702. PARTICULATE MATTER -- EXISTING EQUIPMENT PROCESS WEIGHT LIMITATIONS.

01. General Restrictions. No person may emit into the atmosphere from any 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: ( )

a. If PW is less than 17,000 pounds per hour, ( )
E = 0.045 (PW)0.60

b. If PW is equal to or greater than 17,000 pounds per hour, ( )
E = 1.12 (PW)0.27.

02. **Exemptions**. The provisions of Section 702 do not apply to: ( )

a. Fuel burning equipment; or ( )

b. Equipment used exclusively to dehydrate sugar beet pulp or alfalfa. ( )

03. **Emission Standards**. The following table illustrates the emission standards set forth in Section 702.

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. may 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. ( )

a. If P is less than sixty thousand (60,000) pounds per hour, $E = 0.02518(P)^{0.67}$ ( )

b. If P is greater than or equal to sixty thousand (60,000) pounds per hour, $E = 23.84(P)^{0.11} - 40$ ( )

02. **Emission Standards**. The following table illustrates the emission standards set forth in Section 703.

ALLOWABLE RATE OF EMISSION BASED ON PROCESS WEIGHT RATE

Process Weight Rate	Rate of Emission	Process Weight Rate	Rate of Emission
Lb/Hr	Lb/Hr	Lb/Hr	Lb/Hr
100	0.551	16,000	16.5
200	0.877	18,000	17.9
400	1.40	20,000	19.2
600	1.83	30,000	25.2
800	2.22	40,000	30.5
1,000	2.58	50,000	35.4
1,500	3.38	60,000	40.0
2,000	4.10	70,000	41.3
2,500	4.76	80,000	42.5
3,000	5.38	90,000	43.6
3,500	5.96	100,000	44.6
4,000	6.52	120,000	46.3
5,000	7.58	140,000	47.8
6,000	8.56	160,000	49.0
7,000	9.49	200,000	51.2
8,000	10.4	1,000,000	69.0
9,000	11.2	2,000,000	77.6
10,000	12.0	6,000,000	92.7
12,000	13.6		

( )

704. -- 724. (RESERVED)

725. RULES FOR SULFUR CONTENT OF FUELS.

The reference test method for measuring fuel sulfur content is ASTM method, D129-95 Standard Test for Sulfur in Petroleum Products (General Bomb Method) or such comparable and equivalent method approved in accordance with Subsection 157.02.d. Test methods and procedures must comply with Section 157. ( )

01. Definitions. ( )

a. ASTM. American Society for Testing and Materials. ( )

b. Distillate Fuel Oil. Any oil meeting the specifications of ASTM Grade 1 or Grade 2 fuel oils. ( )

c. Residual Fuel Oil. Any oil meeting the specifications of ASTM Grade 4, Grade 5 and Grade 6 fuel oils. ( )

02. Residual Fuel Oils. No person may sell, distribute, use or make available for use, any residual fuel oil containing more than one and three-fourths percent (1.75%) sulfur by weight. ( )

03. Distillate Fuel Oil. No person may sell, distribute, use or make available for use, any distillate fuel oil containing more than the following percentages of sulfur: ( )

a. ASTM Grade 1. ASTM Grade 1 fuel oil - zero point three percent (0.3%) by weight. ( )

b. ASTM Grade 2. ASTM Grade 2 fuel oil - zero point five percent (0.5%) by weight. ( )

04. Coal. No person may sell, distribute, use or make available for use, any coal containing greater than one percent (1.0%) sulfur by weight. ( )

05. Alternative. The Department may approve in a permit issued in accordance with these rules an alternative fuel sulfur content if the applicant demonstrates that, through control measures or other means, sulfur dioxide emissions (based on a one (1) hour averaging period) are equal to or less than those resulting from the combustion of fuels complying with the limitations of Subsections 725.01 through 725.04. ( )

726. -- 749. (RESERVED)

750. RULES FOR CONTROL OF FLUORIDE EMISSIONS.
This section prevents the emission of fluorides such that the accumulation of fluorine in feed and forage for livestock does not exceed the safe limits specified below. ( )

01. Emission Limitations -- Phosphate Fertilizer Plants. No person may allow, suffer, cause or permit the discharge into the atmosphere of total fluoride emissions in gaseous and in particulate form, expressed as fluoride (F-), from the phosphate fertilizer plant sources listed in Subsection 750.03 in excess of thirty hundredths (0.30) pounds of fluoride per ton of P2O5 input to the calciner operation, calculated at maximum rated capacity. ( )

02. Monitoring, Testing, and Reporting Requirements. Compliance with Subsection 750.01 will be adjudged upon the results of the continuing program of fluoride sampling of potential grazing areas and alfalfa growing areas required by the Department. Sampling conducted by any person subject to Section 750 will be accepted for determining compliance with Subsection 750.01 if such sampling is conducted at sites approved by the Department in advance of sampling, using analytical procedures appearing in the Procedures Manual for Air Pollution Control, Section I (Source Test Methods) or equivalent methods approved by the Department in advance of sampling. Compliance with Subsection 750.01 must be demonstrated by testing methods approved in advance by the Department. When approved by the Department in advance of sampling, engineering calculations may be submitted in lieu of emission data. Monitoring and reporting requirements will be included in operating permits granted to each facility. ( )

03. Source Specific Permits. To assure compliance with Subsection 750.01, the Department will specify methods for calculating total allowable emissions and issue source specific permits containing emission limitations for the following sources within phosphate fertilizer plants: ( )

a. Calciner operation; and ( )

b. Wet phosphoric acid plants; and ( )

c. Super phosphoric acid production; and ( )

d. Diammonium phosphate plants; and ( )

e. Monoammonium phosphate production; and ( )

f. Triple super phosphate (mono calcium phosphate) production. ( )

04. Exemptions. The provisions of Subsections 750.01, 750.02, and 750.03 do not apply to any phosphate fertilizer facility that produces mono ammonium phosphate exclusively if no animal feed is grown or if no animal grazing occurs or if the animal feed and forage meets the ambient air quality standards for fluorides specified in Section 577 within a three (3) mile radius of such facility. This exemption only applies if the owner or operator of the facility, on an annual basis: ( )

a. Conducts a fluoride sampling program of potential grazing areas at locations approved in advance of sampling by the Department, using analytical techniques appearing in the Procedures Manual for Air Pollution Control, Section I (Source Test Methods); and ( )

b. Submits the results of such sampling program to the Department as soon as they become available. ( )

751. -- 759. (RESERVED)

760. RULES FOR THE CONTROL OF AMMONIA FROM DAIRY FARMS.
Sections 760 through 764 establish the requirements for the control of ammonia through best management practices (BMPs) for certain size dairy farms licensed by the Idaho State Department of Agriculture to sell raw milk for human consumption. Compliance with these sections does not relieve the owner or operator of a dairy farm from the responsibility of complying with all other federal, state and local applicable laws, regulations, and requirements, including, but not limited to, Sections 161, 650 and 651. Registration forms and guidance documents relating to these rules are located at www.deq.idaho.gov. ( )

761. GENERAL APPLICABILITY.
The requirements of Sections 760 through 764 apply to the following size dairy farms:

SUMMARY: Animal Unit (AU) or mature cow threshold to produce 100 ton NH_3/year

Animal Unit (AU) Basis	Drylot	Free Stall/Scrape	Free Stall/Flush
	AU (100 t NH_3) Threshold		
No land app	7089	3893	2293
27% volatilization 1	6842	3827	
80% volatilization 2	6397	3700	
Cow Basis (1400 lbs)	Drylot	Free Stall/Scrape	Free Stall/Flush
	Total Cows (100 t NH_3) Threshold		
No land app	5063	2781	1638
27% volatilization 1	4887	2733	
80% volatilization 2	4569	2643	
1 Assumes: Expected level of N->NH_3 volatilization for: drop-hose or ground level liquid manure application			
2 Assumes: Expected level of N->NH_3 volatilization for: center pivot or other conventional sprinkler irrigation liquid manure application			

( )

762. PERMIT BY RULE.

01. General Requirement. Owners and operators of dairy farms are deemed to have a permit by rule if

they comply with all of the applicable provisions of Sections 760 through 764. Owners and operators of dairy farms subject to Sections 760 through 764 must not operate without obtaining the applicable permit by rule within the time frame specified. ( )

02. Optional Permit by Rule. Nothing in Sections 760 through 764 precludes any owner or operator of a dairy farm from requesting and obtaining an air quality permit pursuant to Section 200, nor do Sections 760 through 764 preclude an owner or operator of a dairy farm below the threshold size in Section 761 from complying with Sections 760 through 764 and thereby obtaining a permit by rule. ( )

03. Exemption. If a dairy farm not subject to Sections 760 through 764 otherwise would become subject to those sections as a result of an emergency, the dairy farm must notify the Department in writing within fourteen (14) days of the emergency. The notification must include an explanation of the emergency circumstances. The dairy farm is exempt from the requirements of Sections 760 through 764 as long as the consequences of the emergency continue (but in no case for more than one (1) year) unless for good cause the Department determines it is appropriate to limit, condition or revoke the exemption. For the purpose of this rule "emergency" is defined as a serious situation or occurrence that happens unexpectedly and demands immediate action. ( )

763. REGISTRATION FOR PERMIT BY RULE.

01. Registration Process. Any owner or operator of a new dairy farm subject to sections 760 through 764, or an existing dairy farm that becomes subject to these sections due to change in size or type of operation, must register prior to fifteen (15) days of triggering the threshold for which a permit is required. ( )

02. Registration Due Date. Any owner or operator of an existing dairy farm subject to Sections 760 through 764 must register within fifteen (15) days of the effective date of Sections 760 through 764. ( )

03. Registration Information. The following information must be provided by the registrant to the Department of Environmental Quality and the Department of Agriculture: ( )

a. Name, address, location of dairy farm, and telephone number. ( )

b. Information sufficient to establish that the dairy farm is of the size and type described in Section 761. ( )

c. Information describing what BMPs, as described in Section 764, are employed to total twenty-seven (27) points. ( )

04. Exemption from Registration Fee. Dairy farms subject to Sections 760 through 764 are exempt from paying the permit by rule registration fee set forth in Section 800. ( )

05. Inspection. Within thirty (30) days of receipt of the registration information, the state of Idaho will conduct a qualifying inspection to ensure the requisite point total of BMPs are employed. ( )

764. DAIRY FARM BEST MANAGEMENT PRACTICES.

01. BMPs. Each dairy farm subject to Sections 760 through 764, or that otherwise obtains a permit by rule under these sections, must employ BMPs for the control of ammonia to total twenty-seven (27) points. Points may be obtained through third party export with sufficient documentation. The table located at Subsection 764.02. lists available BMPs and the associated point value. As new information becomes available or upon request, the Department may determine a practice not listed in the table constitutes a BMP and assign a point value. ( )

02. Table - Ammonia Control Practices for Idaho Dairies.

Ammonia Control Practices for Idaho Dairies

		Ammonia Control Effectiveness[1]			
System	**Component**	**Open Lot**	**Freestall Scrape**	**Freestall Flush**	**Compliance Method[3]**
Waste Storage and Treatment Systems	Synthetic Lagoon Cover	15	20	20	1
	GeoteXtile Covers	10	13	13	1
	Solids Separation	3	3	3	3, 4
	Composting	4	4	4	1
	Separate Slurry and Liquid Manure Basins	6	10	-	1
	In-House Separation	0	12	0	1
	Direct Utilization of Collected Slurry	6	10	-	1, 3, 4
	Direct Utilization of Parlor Wastewater	10	10	10	1
	Direct Utilization of Flush Water	8	0	13	3, 4
	Anaerobic Digester	-	-	-	-
	Anaerobic Lagoon	-	-	-	-
	Aerated Lagoon	10	12	15	2
	Sequencing-Batch Reactor	15	20	20	2
	Lagoon Nitrification/Denitrification Systems	15	20	20	2
	Fixed-Media Aeration Systems	15	20	20	2
	Zeolite Treatment of Liquid Manure 1lb/cow/day	4	5	5	2
	Zeolite Treatment of Liquid Manure 2lb/cow/day	8	10	10	2
General Practices	Vegetative or Wooded Buffers (established)	7	7	7	1
	Vegetative or Wooded Buffers (establishing)	2	2	2	1
	Alternatives to Copper Sulfate	-	-	-	-
Freestall Barns	Scrape Built Up Manure	-	3	3	1
	Frequent Manure Removal	UD	UD	UD	-

Ammonia Control Practices for Idaho Dairies

		Ammonia Control Effectiveness[1]			
System	**Component**	**Open Lot**	**Freestall Scrape**	**Freestall Flush**	**Compliance Method[3]**
	Tunnel Ventilation	-	-	-	-
	Tunnel Ventilation w/Biofilters	-	10	10	1
	Tunnel Ventilation w/Washing Wall	-	10	10	3, 4
Open Lots and Corrals	Rapid Manure Removal	4	2	2	1, 2
	Corral Harrowing	4	2	2	1
	Surface Amendments	10	5	5	2
	In-Corral Composting / Stockpiling	4	2	2	1
	Summertime Deep Bedding	10	5	5	1
Animal Nutrition	Manage Dietary Protein	2	2	2	2
Composting Practices	Alum Incorporation	12	8	6	2
	Carbon:Nitrogen Ratio (C:N) Ratio Manipulation	10	7.5	5	2
	Composting with Windrows	-	-	-	-
	Composting Static Pile	6	4.5	3	1
	Forced Aeration Composting	10	7.5	5	1
	Forced Aeration Composting with Biofilter	12	8	6	1
	Zeolite Incorporation	12	8	6	2
Land Application[2]	Soil Injection - Slurry	10	15	7.5	2
	Incorporation of Manure within 24 hrs	10	10	10	2
	Incorporation of Manure within 48 hrs	5	5	5	2
	Nitrification of Lagoon Effluent	10	10	15	3, 4
	Low Energy/Pressure Application Systems	7	7	10	1
	Freshwater Dilution	5	8	8	1, 2
	Pivot Drag Hoses	8	8	10	1

Ammonia Control Practices for Idaho Dairies

System	Component	Ammonia Control Effectiveness[1]			
		Open Lot	Freestall Scrape	Freestall Flush	Compliance Method[3]
	Subsurface Drip Irrigation	10	10	12	1

Notes:
1. The ammonia emission reduction effectiveness of each practice is rated numerically based on practical year-round implementation. Variations due to seasonal practices and expected weather conditions have been factored into these ratings. Not implementing a BMP when it is not practicable to do so, does not reduce the point value assigned to the BMP, nor does it constitute failure to perform the BMP. UD indicates that the practice is still under development.

2. Land application practices assume practice is conducted on all manure; points will be pro-rated to reflect actual waste treatment; points can be obtained on exported material with sufficient documentation.

3. Method used by inspector to determine compliance
1=Observation by Inspector
2=On-Site Recordkeeping Required
3, 4=Deviation Reporting Required. Equipment upsets and/or breakdowns must be recorded in a deviation log and if repaired in a reasonable timeframe does not constitute non-compliance with this rule.

( )

765. -- 789. (RESERVED)

790. RULES FOR THE CONTROL OF NONMETALLIC MINERAL PROCESSING PLANTS.
Sections 790 through 799 establish the requirements for nonmetallic mineral processing plants, frequently referred to as rock crushers. Definitions for nonmetallic mineral processing plants can be found in 40 CFR Part 60, Subpart OOO. Compliance with Section 790 does not relieve the owner or operator of a nonmetallic mineral processing plant from the responsibility of complying with other federal, state, and local applicable laws, regulations, and requirements. ( )

791. GENERAL CONTROL REQUIREMENTS.

01. Prohibition. No owner or operator of a nonmetallic mineral processing plant *may* allow, suffer, or cause the emissions of any air pollutant to the atmosphere 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. *( )*

02. Control of Fugitive Dust. In accordance with Sections 650 and 651, owners and operators of nonmetallic mineral processing plants must take all reasonable precautions to prevent the generation of fugitive dust. In determining what is reasonable, consideration will be given to factors such as the proximity to human habitations and/or activities and atmospheric conditions that might affect the movement of particulate matter. ( )

792. (RESERVED)

793. EMISSIONS STANDARDS FOR NONMETALLIC MINERAL PROCESSING PLANTS NOT SUBJECT TO 40 CFR PART 60, SUBPART OOO.
Owners and operators of nonmetallic mineral processing plants that are not subject to a 40 CFR Part 60 requirement must comply with the emissions standards set forth in Section 793. ( )

01. Processing Plants Not Regulated by 40 CFR Part 60. Fixed or portable plants that commenced construction, reconstruction, or modification before August 31, 1983, are not subject to 40 CFR 60, Subpart OOO. ( )

02. Emissions Standards for Fugitive Emissions. Emissions that exhibit greater than twenty percent (20%) opacity must not be discharged in the atmosphere from any crusher, grinding mill, screening operation, bucket elevator, belt conveyor, conveying system, transfer point, vent, capture system, storage bin, stockpile, truck dumping operation, vehicle traffic on an affected paved public roadway, vehicle traffic on or wind erosion of an unpaved haul road, or other source of fugitive emissions. Opacity must be determined using the test methods and procedures in Section 625. The plant is not required to have a certified opacity reader. ( )

794. PERMIT REQUIREMENTS.
No owner or operator may commence construction, reconstruction, modification or operation of any nonmetallic mineral processing plant regardless of whether or not the source is an affected facility pursuant to 40 CFR 60.670(e) without first obtaining a permit or complying with Sections 795 through 799. The owner or operator must comply with the permitting requirements of Subsection 794.02 or Subsection 794.03 and the applicable portions of Subsection 794.04 and/or Subsection 794.05. ( )

01. Permit by Rule Eligibility. New major facilities or major modifications subject to Sections 204 and 205 are not eligible for a Permit by Rule. ( )

02. Permit by Rule. Owners and operators of nonmetallic mineral processing plants that meet all the applicable requirements set forth in Sections 795 through 799 are deemed to have a permit by rule (PBR) and *are* not required to obtain a permit to construct under Sections 200 through 227. *( )*

03. Permit to Construct. Owners and operators of nonmetallic mineral processing plants that do not meet all of the requirements set forth in Sections 795 through 799, or that operate or intend to operate a nonmetallic mineral processing plant at a single site of operations for more than twelve (12) consecutive months, or that choose to construct and operate under specific permit requirements rather than the provisions of the permit by rule must obtain a permit to construct pursuant to Sections 200 through 227. An existing permit to construct will be considered valid until the permit is modified, incorporated into a Tier II operating permit, or terminated by the Department. ( )

04. Tier I Operating Permits. Owners and operators of nonmetallic mineral processing plants that are affected facilities subject to a requirement of 40 CFR Part 60 are Tier I sources as defined in Section 006. Tier I sources must comply with the applicable permitting requirements of Sections 300 through 397. ( )

05. Tier II Operating Permits. Owners and operators of nonmetallic mineral processing plants that are required by the Department or choose to obtain a Tier II operating permit pursuant to Sections 400 through 409 must operate in accordance with the specific provisions of the Tier II operating permit until such time as the operating permit is terminated in writing by the Department. The Department may require owners and operators of nonmetallic mineral processing plants to obtain a Tier II operating permit whenever the Department determines that: ( )

a. Emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increment; or ( )

b. Specific emissions standards, or requirements on operation or maintenance are necessary to ensure compliance with any applicable emission standard or rule. ( )

795. PERMIT BY RULE REQUIREMENTS.
Sections 795 through 799 establish the requirements for a permit by rule for nonmetallic mineral processing plants. ( )

796. APPLICABILITY.

01. Permit by Rule. Owners and operators of nonmetallic mineral processing plants are deemed to have a permit by rule if they comply with all of the applicable provisions of Sections 795 through 799. Nothing in Sections 795 through 799 precludes any owner or operator from obtaining a permit. Portable sources that operate or

may be operated at a single location or site of operations for more than twelve (12) consecutive months must obtain a permit to construct. ( )

02. Permit Option. Owners and operators of nonmetallic mineral processing plants that hold a valid permit to construct or a Tier II operating permit must comply with the terms and conditions of the permit and are not subject to the requirements of the permit by rule in Sections 795 through 799. ( )

797. REGISTRATION FOR PERMIT BY RULE.

01. Registration Process. Any owner or operator of a nonmetallic mineral processing plant that opts to operate under the permit by rule must register in the following manner: ( )

a. Any new or modified processing plant must register fifteen (15) days prior to commencing operation or modification. The Department will acknowledge registration in writing within fifteen (15) days. ( )

b. Any permitted processing plant must register with the Department and request termination of the current permit to construct or Tier II operating permit. The Department will normally act on the request within fifteen (15) days and notify the registrant in writing. ( )

Registration for permit by rule does not relieve the owner or operator of portable equipment from the registration and relocation requirements of Section 500. ( )

02. Registration Information. The following information must be provided by the registrant using forms furnished by the Department, or by other means approved by the Department. ( )

a. For all crushers and grinding mills, the registrant shall supply information on the manufacturer, crusher type (such as jaw, cone), serial number, date of manufacture, and maximum throughput capacity. ( )

b. For all screen decks, the registrant shall supply manufacturer name, physical size of screen, number of decks, serial number, and date of manufacture. ( )

c. For all electrical generators, the registrant shall supply manufacturer name, rated output, and fuel. ( )

798. ELECTRICAL GENERATORS.
The following requirements apply to all electrical generators used to provide electrical power to any nonmetallic mineral processing plant. The requirements apply to each site of operations. ( )

01. Fuel Type. Only ASTM (American Society of Testing and Materials) Grade 1 or 2 fuel oil may be used. The sulfur content of the fuel used must not exceed the percentages of sulfur given in Section 725. ( )

02. Generator Operating Requirements. For the purposes of Sections 790 through 799, the following apply to all electrical generators.

Rated Output Capacities (kW)	Allowable Operating Hours (hr/day)		Allowable Operating Hours (hr/yr)	
	Attainment Unclassifiable Areas	PM-10 Nonattainment Areas	Attainment Unclassifiable Areas	PM-10 Nonattainment Areas
0 - 454	24	8	8760	2880
455 - 1000	24	24	8760	8760
1001 - 2000	24	24	5200	5200

Rated Output Capacities (kW)	Allowable Operating Hours (hr/day)		Allowable Operating Hours (hr/yr)	
	Attainment Unclassifiable Areas	PM-10 Nonattainment Areas	Attainment Unclassifiable Areas	PM-10 Nonattainment Areas
kW = kilowatts hr/day = hours per day hr/yr = hours per year				

( )

03. Generator Opacity Limit. Visible emissions from any generator stack, vent, or other functionally equivalent opening must not exceed twenty percent (20%) opacity for a period or periods aggregating more than three (3) minutes in any sixty (60) minute period. Opacity must be determined using the test methods and procedures contained in Section 625. ( )

04. Monitoring and Recordkeeping Requirements. ( )

a. The owner or operator must monitor and record the following information. ( )

i. The rated output capacity, in kilowatts (kW), of the electrical generator(s) used; ( )

ii. Operating hours on a monthly and annual basis so compliance can be continuously determined for the previous twelve (12) month period; and ( )

iii. Vendor receipts of the fuel oil purchased clearly identifying the ASTM Grade. ( )

b. Records of monitoring and recordkeeping requirements for current operations must be maintained at the site of operations for the duration of operations at that location and must be available to Department representatives upon request. Records for previous sites of operation must be kept for the most recent two (2) year period at a location where they can be reasonably accessed and be made available to the Department upon request. ( )

799. NONMETALLIC MINERAL PROCESSING PLANT FUGITIVE DUST BEST MANAGEMENT PRACTICE.

The owner or operator of a nonmetallic mineral processing plant must use the Best Management Practices (BMP) contained in Section 799 to control the emissions of fugitive dust. Fugitive dust emissions must be reasonably controlled as required by Sections 650 and 651. It is the responsibility of the owner or operator to reasonably control fugitive emissions at each site of operations but only for the duration of operations at each site under the control of the owner or operator. ( )

01. Generally Applicable Requirements. All reasonable precautions must be taken to prevent particulate matter from becoming airborne. ( )

a. The owner or operator of a nonmetallic mineral processing plant must at all times be observant of all sources of fugitive dust emissions and monitor control strategies at least once per day when operating. The following events will trigger initiation of the prescribed control strategy or control strategies to control the fugitive dust emissions. ( )

i. When fugitive dust emissions are observed at any time to be exceeding any control strategy trigger specified in Subsections 799.02 through 799.06, that event triggers initiation of the prescribed control strategy or control strategies to control the fugitive dust emissions. ( )

ii. Citizen complaints of failure to reasonably control fugitive dust must be expeditiously evaluated by

the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy must be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. ( )

b. A progressive control strategy must be used to reasonably control the emissions of fugitive dust. Progressive control strategy means that if the initial control strategy or strategies chosen do not adequately control fugitive dust emissions, the owner or operator must employ successive control strategies as listed until fugitive dust control is achieved. Fugitive dust control must be applied on a frequency such that visible emissions do not exceed any emission standard specified in Sections 790 through 799. ( )

c. The owner or operator must maintain a record of each event where a control strategy is triggered. The trigger must be recorded with a summary of the control strategy employed. If the trigger is a citizen complaint, the owner or operator must record the complaint, an evaluation of whether the complaint has merit, and a summary of the corrective action taken. The record must be maintained on forms provided by the Department or other forms that contain similar information. Records for current operations must be maintained at the site of operations for the duration of operations at that location and must be available to Department representatives upon request. Records for previous sites of operation must be kept for the most recent two (2) year period at a location where they can be reasonably accessed and must be made available to the Department upon request. ( )

02. Requirements for Paved Public Roadways. ( )

a. Definitions. ( )

i. A paved public roadway means a roadway accessible to the general public having a surface of asphalt or concrete. ( )

ii. Track-out means the deposition of mud, dirt, or similar debris onto the surface of a paved public roadway from the tires and/or undercarriage of any vehicle associated with the operation of a nonmetallic mineral processing plant. ( )

b. Control strategy triggers that require initiation of a strategy or strategies to control fugitive dust emissions from track-out include, but are not limited to: ( )

i. Visible deposition of mud, dirt, or similar debris on the surface of a paved public roadway. ( )

ii. Visible fugitive emissions from vehicle traffic on an affected paved public roadway that approach twenty percent (20%) opacity for a period or periods aggregating more than one (1) minute in any sixty (60) minute period. ( )

c. The following are control strategies for track-out. ( )

i. Prompt removal of mud, dirt, or similar debris from the affected surface of a paved public roadway. ( )

ii. Water flush, and/or water flush and vacuum sweep, the affected surface of the paved public roadway. Runoff must be controlled so it does not saturate the surface of the adjacent unpaved haul road such that track-out is enhanced. If runoff is not, or cannot be controlled, gravel must be applied to the surface of the adjacent unpaved haul road over an area sufficient to control track-out. ( )

iii. Apply gravel to the surface of the adjacent unpaved haul road. The area of application must be sufficient to control track-out. ( )

iv. Apply an environmentally safe chemical soil stabilizer or chemical dust suppressant to the surface of the adjacent unpaved haul road. The area of application must be sufficient to control track-out. ( )

v. Other control strategy or strategies as approved by the Department. ( )

03. Requirements for Unpaved Haul Roads. ( )

a. Unpaved haul roads are defined as any unsurfaced roadway within the physical boundary of a nonmetallic mineral processing facility that is used as a haul road, access road, or similar. ( )

b. Control strategy triggers that require initiation of a strategy or strategies to control fugitive dust emissions from unpaved haul roads include, but are not limited to visible fugitive emissions from vehicle traffic on unpaved haul roads that approach twenty percent (20%) opacity for a period or periods aggregating more than one (1) minute in any sixty (60) minute period. ( )

c. The following are control strategies for fugitive dust emissions from unpaved haul roads. ( )

i. Limit vehicle traffic on unpaved haul roads. ( )

ii. Limit vehicle speeds on unpaved haul roads. If a speed limit is imposed, signs must be posted along the haul road route and clearly indicate the speed limit. Signs must be placed so they are visible to vehicles entering and leaving the site of operations. ( )

iii. Apply water to the surface of the unpaved haul road. Runoff must be controlled so it does not saturate the surface of the unpaved haul road such that it causes track-out. If runoff is not, or cannot be controlled, gravel must be applied to the surface of the unpaved haul road over an area sufficient to control track-out. ( )

iv. Apply gravel to the surface of the unpaved haul road. ( )

v. Apply an environmentally safe chemical soil stabilizer or chemical dust suppressant to the surface of the unpaved haul road. ( )

vi. Other control strategy or strategies as approved by the Department. ( )

04. Requirements for Transfer Points, Screening Operations, and Stacks and Vents. ( )

a. In addition to the requirements of 40 CFR Part 60, Subpart OOO, incorporated by reference in Section 107, for applicable facilities, the following control strategy triggers require initiation of a strategy or strategies to control fugitive dust emissions from transfer points, belt conveyors, bucket elevators, screening operations, conveying systems, capture systems, and building vents. ( )

i. Opacity greater than twenty percent (20%) from any transfer point on a belt conveyor, conveying system, bucket elevator, or screening operation. ( )

ii. For any transfer point on a belt conveyor, conveying system, bucket elevator, or screening operation located within a building, opacity greater than twenty percent (20%) from any building vent. ( )

iii. Opacity greater than twenty percent (20%) from any capture system stack. ( )

b. The following are control strategies for transfer points, belt conveyors, bucket elevators, screening operations, conveying systems, capture systems, and building vents. Controls must be applied on a frequency such that visible fugitive emissions do not exceed any applicable opacity limit. ( )

i. Limit drop heights of materials such that there is a homogeneous flow of material. ( )

ii. Install, operate, and maintain water spray bars to control fugitive dust emissions at transfer points on belt conveyors, conveying systems, bucket elevators, and screening operations as necessary. ( )

iii. Other control strategy or strategies as approved by the Department. ( )

05. Requirements for Crushers and Grinding Mills. ( )

a. Control strategy triggers that require initiation of a strategy or strategies to control fugitive dust emissions from any crusher, grinding mill, building vent, or capture system stack include the requirements of 40 CFR Part 60, Subpart OOO, for applicable facilities and the following. ( )

i. Opacity greater than twenty percent (20%) from any crusher or grinding mill at which capture system is not used. ( )

ii. For any crusher or grinding mill located within a building, opacity greater than twenty percent (20%) from any building vent. ( )

iii. Opacity greater than twenty percent (20%) from any capture system stack. ( )

b. The following are control strategies for any crusher, grinding mill, building vent, or capture system stack. Controls must be applied on a frequency such that visible fugitive emissions do not exceed any applicable opacity limit. ( )

i. Limit drop heights of materials such that there is a homogeneous flow of material. ( )

ii. Install, operate, and maintain water spray bars to control fugitive dust emissions at crusher drop points as necessary. ( )

iii. Other control strategy or strategies as approved by the Department. ( )

06. Requirements for Stockpiles. ( )

a. Control strategy triggers that require immediate initiation of a strategy or strategies to control fugitive dust emissions from stockpiles include, but are not limited to visible fugitive emissions from wind erosion of any stockpile that approaches twenty percent (20%) opacity for a period or periods aggregating more than one (1) minute in any sixty (60) minute period. ( )

b. The following are control strategies for stockpiles. ( )

i. Limit the height of the stockpiles. ( )

ii. Limit the disturbance of the stockpiles. ( )

iii. Apply water onto the surface of the stockpile. ( )

iv. Other control strategy or strategies as approved by the Department. ( )

800. REGISTRATION FEE FOR PERMIT BY RULE.
A registration fee of two hundred fifty dollars ($250) must be submitted to the Department with each permit by rule registration. ( )

801. PAYMENT OF FEES FOR PERMITS BY RULE REGISTRATION.
The permit by rule registration fee must be paid in its entirety at the time the required registration form is submitted to the Department. Information for making payments is available at http://www.deq.idaho.gov. ( )

802. RECEIPT AND USAGE OF FEES.
Permit by rule registration fee receipts will be deposited by the Department into a stationary source permit account. Monies from this account will be used solely toward technical, legal and administrative support of the Department's Permit to Construct and Tier II permit programs and will not be used for those activities supported by the fund created for implementing the operating permit program required under Title V of the federal Clean Air Act amendments of 1990. Fees payable under Section 800 will be retained by the Department regardless of whether a permit by rule registration is accepted by the Department in response to a registration request. ( )

803. -- 814. (RESERVED)

815. RULES FOR CONTROL OF KRAFT PULP MILLS.
Sections 815 through 818 establish emission standards for recovery furnaces and notification and reporting requirements for low volume high concentration (LVHC) and high volume low concentration (HVLC) gas venting at kraft pulp mills. ( )

816. RECOVERY FURNACE TRS STANDARD.
The average daily emissions of total reduced sulfur (TRS) from each recovery furnace must not exceed fifteen (15) ppm expressed as hydrogen sulfide on a dry basis. Recovery furnaces at kraft pulp mills subject to 40 CFR Part 60 TRS standards are exempt from the requirements of Section 816. ( )

817. RECOVERY FURNACE TRS MONITORING AND RECORDKEEPING.
Owners and operators of each recovery furnace subject to the TRS emission standard in Section 816 must maintain and operate equipment to continuously monitor and record the daily average TRS concentrations. ( )

818. KRAFT PULP MILL LVHC AND HVLC GAS VENTING NOTIFICATION AND REPORTING.
Section 818 is applicable to kraft pulp mill LVHC and HVLC gas venting from sources required to be controlled pursuant to 40 CFR Part 63, Subpart S. For purposes of Sections 130 through 136, an excess emission is defined as a continuous uncontrolled gas venting in excess of five (5) minutes. Excess emissions notification and reporting must be conducted pursuant to the requirements contained in Sections 130 through 136 and the permit issued to the kraft pulp mill. ( )

819. -- 834. (RESERVED)

835. RULES FOR CONTROL OF RENDERING PLANTS.
No person may allow, cause, or permit: ( )

01. Cookers. The operation or use of any device, machine, equipment, or other contrivance to cook inedible animal or marine matter unless all gases, vapors, and gas entrained effluents from these processes are passed through condensers to remove all steam and other condensable materials. All noncondensibles, defined as gases and vapors from processes that are not condensed at standard temperature and pressure unless otherwise specified, passing through the condensers must then be incinerated at one thousand two hundred degrees Fahrenheit (1,200) for a minimum of three-tenths (0.3) seconds, or treated in an equally effective manner. ( )

02. Expellers. The installation or operation of an expeller unless it is properly hooded and all exhaust gases are ducted to odor control equipment. ( )

03. Plant Air. The installation or operation of a rendering plant unless plant ventilation air is collected and ducted to odor control equipment except if it can be demonstrated that without ducting plant ventilation air to the odor control equipment no noticeable odors from the plant can be detected at the property line. ( )

836. -- 999. (RESERVED)