Idaho Department of Health and Welfare

Responses to Comments and Questions Submitted
During a Public Comment Period and Public Hearings
on the Proposed Repeal and Reissuance of
Rules for the Control of Air Pollution in Idaho

INTRODUCTION

The Notice of Proposed Rules for the Idaho Department of Health and Welfare's proposed repeal and reissuance of the Rules for the Control of Air Pollution was published in the Administrative Bulletin on September 3, 1993. The public comment period for the proposed rules was held from September 3, 1993 through October 8, 1993. Hearings were held in Coeur d'Alene, Pocatello and Boise, Idaho on September 30, October 5 and October 7, 1993, respectively. In addition, the portions of the proposed rules addressing toxic air pollutants were released for public comment in accordance with the old Administrative Procedures Act from March 12, 1993 through April 21, 1993. Hearings were held in Idaho Falls, Coeur d'Alene, Pocatello, Lewiston, Twin Falls and Boise, Idaho on April 6, March 23, March 24, March 24, March 25 and March 29, respectively.

IDHW is proposing a repeal and reissuance of the chapter due primarily to the extensive renumbering, restructuring and reformatting requirements of the Administrative Rules Coordinator. Most sections of the rules are not substantively affected by this rulemaking, and thus, comments regarding such sections are not considered to be substantive.

Substantive public comments which concern the proposed rulemaking have been summarized below. Each comment is followed by the Department's response. Some comments have been combined and paraphrased in order to eliminate duplication and provide a clearer summary. Each response to a comment discusses only the facts necessary to address the comment.

GENERAL COMMENTS

Comment #1: The State's proposed permitting rule is extremely restrictive; and we believe the State permit program should deviate as little as possible from the federal permitting program, in order to avoid inconsistent liabilities and to protect Idaho from possible loss of primacy.

IDHW Response: Many sections of 40 CFR Part 70 are left to the discretion of the implementing state. The Department has incorporated the basic frame work from 40 CFR Part 70 into these rules while designing an operating permit program that meshes with existing Idaho programs. The Department has incorporated the legislated directive to take advantage of the flexibility authorized in the Clean Air Act into these rules.

Comment #2: The proposed permitting regulations also lack implementing detail. The implementation of these regulations provides the "teeth" to the permitting process.

- **How are PTC/PSDs to be "rolled" into the operating permits?**
- **What is the schedule for submittal of permit applications?**
- **What is the schedule for approval of permit applications?**
- **What is the schedule for reissuing permits after initial approval?**
- **What is the recommended format for permit application?**
- **When will permit application forms be provided?**

IDHW Response: The Department has reworked the Tier I rules in response to this and other similar comments. The final rules have been rearranged to improve the logical organization and to clarify the procedures and requirements of the Tier I operating permit program.

Comment #3: The portions of the rules addressing toxic air pollutants are too complex and confusing.

IDHW Response: The rules have been changed in response to this comment. The rules have been revised and reorganized for the sake of clarity.

Comment #4 : The lists are too broad.

IDHW Response: The rules have not been changed in response to this comment. IDHW has attempted to regulate common industrial chemicals for which there is adequate data and for which there may be a reasonable anticipation of exposure to the public. There are currently millions of industrial chemicals in use. There is health data on about 70,000. IDHW is currently proposing to regulate less than 600 non-carcinogenic chemicals and less than 100 carcinogenic chemicals. Lacking a comprehensive emissions inventory, it is impossible to develop a list of regulated substances that take into account only those substances actually emitted at this time in Idaho. Processes change, and new business start so this sort of a "snapshot in time" list of chemicals becomes problematic if not impossible. Finally, if we do not have a reasonable program to control TAP in Idaho, both present and future, we run the risk of becoming a "toxic magnet" for businesses desiring to move to a more unregulated area.

After receiving similar comments after the withdrawn toxics rulemaking we reviewed the proposed list with such comments in mind and removed a number of compounds that we agreed did not materially add to the protection of the public health or the environment. It is IDHW's position that the TAP lists as currently compiled are a reasonable compromise between the need of industry to do business and the need to protect human health and the environment.

Comment #5 : The regulatory levels are too stringent.

IDHW Response: The rules have not been changed in response to this comment. IDHW has attempted to strike a balance between the needs of industry to do business and the need to protect human health and the environment. We believe that IDHW formula for figuring ambient and emissions levels for both carcinogen and non-carcinogens alike is reasonable and strikes the above noted balance. Finally, when compared to the ambient levels of other states, the ambient levels developed and adopted by IDHW are within regulatory norms.

Comment #6: The proposed regulations require too much IDHW involvement in the permitting process. Deminimis levels should be provided and department approved language should be eliminated.

IDHW Response: The rules have not been changed in response to this comment. The proposed rules and the rules as proposed for adoption already provide "deminimis levels" for permits to construct. If the source is not otherwise required to obtain a permit to construct, emissions of toxic air pollutants that are below the screening emissions levels are exempted without further action by the owner or operator of the source and emissions of toxic air pollutants that are above the screening emissions levels but below the acceptable ambient concentrations are exempted upon sending notice of the emissions to IDHW. If the source is otherwise required to obtain a permit to construct, emissions of toxic air pollutants that are below the screening emissions level are analyzed quickly. Emissions that are above the screening emissions level may be analyzed using several methods.

Deletion of the language requiring approval by IDHW would eliminate IDHW's oversight responsibility and allow the owners and operators of sources to decide for themselves whether they should receive a permit.

Comment #7: IDHW should adopt rules requiring an applicant to demonstrate compliance with the National Environmental Policy Act (NEPA) and DOE Orders in order to receive an air quality permit. Also recommend procedures for ensuring compliance with NEPA and DOE Orders.

IDHW Response: The rules have not been changed in response to this comment. IDHW believes that the Board of Health and Welfare may not be authorized by the air quality provisions of the Environmental Protection and Health Act to adopt rules requiring an applicant to demonstrate compliance with NEPA and DOE Orders in order to receive an air quality permit.

Comment #8: **Include a table of contents.**

IDHW Response: The form of the rules is dictated by the Office of the Administrative Rules Coordinator (ARC). The ARC does not publish a table of contents in the Administrative Bulletin, however, a table of contents for the final rules will be available in other publications and services.

Comment #9: **By restructuring and streamlining the federal regulation as a state rule, the requirements of 40 CFR 70.1(b), 70.7(b), and 70.7(c)(iii) that a source have and comply with a Title V permit has been omitted. In order for the Idaho operating permit program to be approvable, it must clearly require that all the affected sources must have an operating permit and must operate in compliance with that permit.**

IDHW Response: The Department has modified the rules in response to this comment. A prohibition has been added in Section 301.

Comment #10: **The existing Idaho rules regarding confidentiality of business information are too broad and may provide prohibit the public release of information on emissions or other materials in a permit application. In order for the Idaho operating permit program to receive full approval, these confidentiality rules must be revised to be consistent with the requirements of §114(c) of the Clean Air Act and 40 CFR 70.4(b)(3)(vii).**

IDHW Response: The Department has modified the rules in response to this comment. Section 126 has been modified to match a change in Idaho statute effective January 1, 1994. The change requires a person to certify that the information designated as confidential qualifies in accordance with Idaho Code 39-111.

Comment #11: **Although it is acceptable for Idaho to forego adopting phase II acid rain permitting requirements at this time (provided the Governor commits to timely adoption and submittal of rules for phase II permits), Idaho must adopt at this time all of the Title V permit provisions which relate to Title IV (acid rain) sources. The Title V provisions are necessary to address the potential need to permit some Title IV affected sources (e.g., new units, opt-in units) under Title V prior to the effective date of Phase II permits.**

IDHW Response: The Department believes the modifications to Sections 300 through 399 have addressed this comment. Responses to specific comments on Acid Rain provisions can be found in later sections of this document.

Comment #12: The rules do not address interstate contributions to air pollution.

IDHW Response: The rules have not been changed in response to this comment. This is beyond the scope of this rulemaking.

Comment #13: Some concern was expressed over the cost to regulate the substances on our appendices.

IDHW Response: The rules have not been changed in response to this comment. Under the current rule addressing toxic substances, IDHW has been regulating a broader list of chemicals than is regulated by the toxic air pollutants carcinogenic and noncarcinogenic increments. IDHW expects the costs per source to decrease as a result of this rulemaking.

Comment #14: It is unfair that these rules apply only to new sources.

IDHW Response: The rules have not been changed in response to this comment. The new portions of the rules addressing toxic air pollutants apply only to the net emissions increases from new and modifying sources of toxic air pollutants. It is common for new rules to "grandfather" existing sources and exempt them from compliance with the new rule. The existing portions of the rules regulating toxic substances will be applicable to all sources of toxic substances, including existing sources. The toxic substances rule will be implemented through the Tier II operating permit program on a case-by-case basis.

Comment #15: It will be nearly impossible for sources, especially small ones to identify what may come out of their stack.

IDHW Response: The rules have been changed in response to this comment. New section 210.01 has been added to provide information regarding how to identify toxic air pollutants emitted by the source.

Comment #16: IDHW has inadequate resources to enforce the requirements of the permit to construct program in general, and the new rules addressing toxic air pollutants in particular.

IDHW Response: The rules have not been changed in response to this comment. Under the current rule addressing toxic substances, IDHW has been effectively regulating a broader list of chemicals than is regulated by the toxic air pollutants carcinogenic and noncarcinogenic increments. IDHW expects to receive adequate

resources to implement and enforce the proposed rules addressing toxic air pollutants.

Comment #17: **Any rules more stringent than the federal regulations must be approved by the legislature which may cause Idaho to have only the EPA minimums.**

IDHW Response: The rules have not been changed in response to this comment. Idaho Code § 39-118B states in part "...that where EPA adopts or has adopted a specific standard, emission limitation or control technology requirement under the clean air act a more stringent standard, emission limitation or control technology requirement promulgated by the board shall not become effected until specifically approved by statute." The terms "specific standard," "specific emission limitation" and "specific control technology requirement" limit the scope of the section, and thus, the section is not applicable to "any state rule" as suggested by the commenter. In addition, the rules addressing toxic air pollutants are not more stringent than any such federal provision and will not need statutory approval to become effective.

Comment #18: **Does EPA have to approve state air toxics rules?**

IDHW Response: The rules have not been changed in response to this comment. With few exceptions, Idaho's air quality programs are adopted and implemented under state authorities. Federal approval of state air quality programs is only necessary to avoid federal sanctions and obtain federal benefits. The toxic air pollutant program is not mandated by the federal Clean Air Act and IDHW does not expect to submit them to EPA for federal approval.

Comment #19: **The IDHW makes its permitting decisions based only on the data that the source provides.**

IDHW Response: The rules have not been changed in response to this comment. IDHW conducts a thorough engineering review of all data submitted by the applicant. This data is checked for completeness and accuracy. A permit is issued only after IDHW engineers, meteorologists and other professionals are satisfied that the data submitted are complete and accurate. Furthermore follow up source testing and other appropriate methods for demonstrating actual and continuing compliance are required in permits.

Comment #20: **It was suggested that IDHW determine T-Ract for source categories. Additionally, the question was asked, how will IDHW know what control technology is available for each regulated chemical.**

IDHW Response: The rules have not been changed in response to this comment. Industries in Idaho are dissimilar enough in process to make this very difficult.

Any given control technology will control more than one specific substance. There is substantial literature available on what technologies control what categories of substances. IDHW will work with the applicants on a case by case basis to identify T-RACT.

Comment #21: A few commenters suggested that the IDHW restrict its new source review policy to the list of 189 substances listed in Section 112 of Title Three of the 1990 Clean Air Act Amendments (CAAA).

IDHW Response: The rules have not been changed in response to this comment. It is the position of the IDHW that this is not in the best interests of the people of Idaho for a number of reasons.

First, the EPA 189 list is not an attempt to protect people or the environment of any specific area but a compromise list to address some of the major nation-wide air pollution source types of air pollution. The EPA and congress have both reiterated that they do not wish negatively impact current state air toxics programs. The original proposed list contained 224 compounds, including ammonia and hydrogen sulfide which were later removed as the result of the political process. We do not believe that this nation-wide effort can be effectively applied to Idaho and be adequate to address the unique Idaho situation.

The EPA 189 list does not include all the well documented carcinogens that have been assigned unit risk factors. State and local agencies need to have the flexibility to protect public health by regulating the emission of TAP into the air.

While it is not possible to predict the future, in a fast growing state like Idaho it is very reasonable to assume that new industries will be moving to Idaho as our work force expands with new residents. In addition, as environmental regulations in California and other states become more restrictive, Idaho will look more attractive to many of these regulated industries. While we certainly want the jobs and incomes that these industries may represent, just as certainly, we do not want to become a "toxic magnet" for polluting industries that other states don't want.

Title III of the Clean Air Act Amendments of 1990 (CAAA) requires EPA to publish a list of source categories and then promulgate maximum achievable control technology (MACT) for the first 40 categories. MACT standards are then required for the rest of the categories on a phased in schedule. If a particular source in Idaho is not addressed in the first 40 source categories, the IDHW without TAP rules, could be unable to address toxic emissions from that source no mater how toxic the emissions might be or in what quantity the emissions may be emitted until EPA finally promulgates MACT standards. Given the past history of EPA deadlines, this is a very real concern. Even if EPA adhered to all

deadlines, some sources would conceivably still be able to emit unregulated toxics until the year 2000, if that source was in the last group to have standards promulgated. It should also be noted that not all sources are covered by these MACT standards. As a consequence, sources not covered by this MACT standard would be unregulated for air toxics in Idaho.

Finally, Congress itself apparently felt that this list was not final. Congress required the EPA to periodically review the list and add pollutants "...which present or may present ...a threat of adverse human health effects (including but not limited to, substances which are known to be, or may be reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acuity or chronically toxic) or adverse environmental effects..."

COMMENTS ON SPECIFIC SECTIONS OF THE PROPOSED RULES

SECTION 100

Comment #22: **There should be a general exemption from all air quality rules for agriculture and agriculture-related industries. This suggestion was made in the context of several definitions.**

IDHW Response: The rules have not been changed in response to this comment. Most agricultural activities and services are exempted from permit to construct requirements, including those addressing toxic air pollutants. Federal statutes and regulations mandate which sources of total suspended particulates and other air pollutants will be required to obtain Tier I operating permits. Except as prohibited by statute, it is appropriate to retain the ability to review all agricultural practices through the Tier II operating permit program. In addition, many of the definitions identified by the commenter have not been substantively changed by this rulemaking. IDHW does not consider it appropriate to respond to comments concerning aspects of the rules that were not substantively addressed in this rule making, but only renumbered, reformatted and restructured as required by The Administrative Rules Coordinator for this rule making.

Comment #23: **Section 100. DEFINITIONS. Definitions of the term "emissions allowable under the permit," must be added to comply with the requirements of Title V of the Act and 40 CFR Part 70.**

IDHW Response: The Department has incorporated a definition of this term into Section 103 of the final rules.

Comment #24: **Section 100.03. Definitions of Actual Emissions. The phrase added in subpart "6" appears to unnecessarily limit when**

permitted emission rates may be considered actual emissions and should be deleted.

IDHW Response: The Department has not modified the rules in response to this comment. This phrase was added to clarify under what circumstances the Department could consider permitted emission rates to be equivalent to actual emissions.

Comment #25: Section 100.03. Actual Emissions. The phrase "January of the current year or the date on which an application for a permit was filed" must be changed to "a particular date". There are many provisions in the permit rules where the actual emissions of a stationary source or emissions unit will need to be determined for some date in the past and this provision would not allow or provide for that determination.

IDHW Response: The Department has made the suggested modification.

Comment #26: Section 100.06 Agricultural Activities and 100.07 Agricultural Field. As drafted, the definition applies only to the agricultural activities "at the point of cultivation," which immediately exempts all animal husbandry activities. The definition should include all agricultural activities. Revised language was suggested. For Agricultural Field, the phrase for commercial sale should be deleted.

IDHW Response: The rules have been changed in response to this comment. IDHW agrees that these definitions need revision but had concerns with the specific language suggested. The rules now define the term "agricultural activities and services". The Definition of "agricultural field" has been deleted.

Comment #27: Section 100.08. Affected States. This definition should be revised to refer to the State of Idaho and not to any "State in which a Tier I permit...".

IDHW Response: The Department has modified this section of the rules in response to this comment.

Comment #28: Section 100.08. Air Pollutant. The use of the term "air pollutant' is likely to cause some confusion with the term "air contaminant," as used in the Idaho Code Section 39-103.04. Revised language was suggested.

IDHW Response: The rules have not been changed in response to this comment. The definition of "air pollutant/air contaminant" in the rules is consistent with the language and intent of the Environmental Protection and Health Act, Idaho Code §§ 39-101 et

seq., and the federal Clean Air Act, 42 U.S.C. §§ 7401 et seq., so that Idaho may obtain and retain federal delegation of several air quality programs.

Comment #29: Section 100.11. Air Pollutant. This definition must be revised to cover every pollutant regulated under the federal Clean Air Act, not just those covered by the Idaho Act and these rules.

IDHW Response: The Department has modified this section of the rules in response to this comment.

Comment #30: Section 100.12. Air Pollution. This definition should use the term "air pollutant," not "contaminant" since only "air pollutant" is defined herein.

IDHW Response: The Department has incorporated the suggested modification into the rules.

Comment #31: Section 100.15 Definition of Ambient Air quality Standards and Violations. There is no definition of the term "ambient air quality standard." The definition of "ambient air quality violation" suggests that any locality may set standards which would them be enforced by IDHW. There may be some confusion with the Air Toxic Increments being assumed to be "air quality standards."

IDHW Response: The rules have not been changed in response to this comment. Local entities may be able to adopt emission standards or ambient air quality standards depending upon the powers and duties that they have been granted by the Idaho Constitution and Idaho Code. If a local entity adopts such standards, IDHW is required to determine whether a proposed source complies with the standard before issuing a permit to construct. This type of determination is usually accomplished by asking the local entity to certify that the proposed source complies with the local standard. IDHW would probably include terms or conditions in the permit to construct that are relevant to the local standard, and thus, a violation of the local standard would probably also be a violation of the permit to construct. Although IDHW could enforce the permit to construct term directly, in most cases the local entity would take the lead in the matter and initiate an enforcement action.

The Toxic Air Pollutant Carcinogenic and Noncarcinogenic Increments are expressed in terms of an ambient air concentration, but they are not ambient air quality standards.

Comment #32: Section 100.16. Allowance. Note that this definition uses the term "affected unit" which either needs to be defined or replaced with the term "Phase II unit."

IDHW Response: The Department has incorporated the suggested modification into the rules.

Comment #33: In Section 100.16 "Unit" is not defined. Replace "unit" with "emissions unit."

See response to comment #32(the comment above).

Comment #34: Section 100.19. Applicable Requirement. This definition must be revised in a number of ways in order to meet the requirements of Title V:

(1) The parenthetical phrase in the opening sentence must be revised to indicate that applicable requirements are only those that have been promulgated or approved by EPA. Rules promulgated by Idaho that have not been approved by EPA are not applicable requirements for purposes of Title V of the Act.

IDHW Response: The Department has modified this section in response to this comment.

Comment #35: Section 100.19. (2) Subsection (a) must be revised to include any standard or requirement promulgated by EPA under Title I of the Clean Air Act.

IDHW Response: The Department has modified this section in response to this comment.

Comment #36: Section 100.19. (3) Subsection (b) must be revised to include terms and conditions in preconstruction permits issued by EPA under Title I (there are permits issued by EPA before Idaho's preconstruction review program was approved by EPA). Furthermore, the clause beginning with "solely excluding..." must be deleted since this definition by its own terms, only applies to Tier I sources.

IDHW Response: The Department has modified this section in response to this comment. The Department has maintained the clarification that terms and conditions relevant only to toxic air pollutants are not applicable requirements.

Comment #37: Section 100.19. (4) Subsection (c) should be revised to refer to all provisions under section 111 of the Act, such as 40 CFR Part 62.

IDHW Response: The Department has modified this section in response to this comment.

Comment #38: Section 100.19. (5) Subsection (d) should be revised to refer to all provisions under section 112 of the Act, such as 40 CFR Part 63.

IDHW Response: The Department has modified this section in response to this comment.

Comment #39: Section 100.19. (6) Subsection (f) must be revised to reference any monitoring requirements promulgated under Section 504(b) of the Act.

IDHW Response: The Department has modified this section in response to this comment.

Comment #40: Section 100.19. (7) Subsection (h) must be revised to avoid any possible confusion in combing the references to 42 U.S.C. §§ 7511b(e) and (f). We suggest the phrase "and tank vessels" be added after the words "consumer and commercial products."

IDHW Response: The Department has incorporated the suggested modification in the rules.

Comment #41: Section 100.19. (8) Subsection (i) must be revised to include reference to Title VI of the Act since future Title VI requirements could be promulgated under provisions other than 40 CFR. Part 82.

IDHW Response: The Department has modified this section in response to this comment.

Comment #42: Section 100.19. (9) An additional subsection must be added, consistent with the EPA regulations, to include any national ambient air quality standard or increment or visibility requirement under part C of Title I of the CAA as applied to temporary sources.

IDHW Response: The Department has added a section to the rules in response to this comment.

Comment #43: Section 100.25. Best Available Control Technology (BACT). This definition must be revised to include reference to 40 CFR Part 63, since all National Emission Standards for Hazardous Air Pollutants are not included in 40 CFR Part 61.

IDHW Response: The Department has modified this section in response to this comment.

Comment #44: Section 100.26. Collection Efficiency. The term "contaminant" should be changed to "air pollutant."

IDHW Response: The Department did not modify the rules in response to this comment. However, the definition of air pollutant has been modified.

Comment #45: Section 100.39. Designated Representative. This definition must be revised to use the term "affected unit", not just "unit". Also it must be consistent with the definition in EPA's Acid Rain regulations. "Unit" is not defined. Replace "unit" with "emissions unit.

IDHW Response: The Department has modified this section to clarify that a "unit" is a "phase II unit".

Comment #46: Section 100.39. Effective Dose Equivalent. While this definition is taken directly from the Code of Federal Regulations, it could be written more clearly. Different language was suggested.

IDHW Response: The rules have not been changed in response to this comment. Changing the definition would adversely affect the regulatory scheme for radionuclides from sources regulated under 40 CFR Part 61 or 40 CFR Part 63 since the emission standards for such air pollutants are based on "effective dose equivalent" as defined in the federal regulations.

Comment #47: 100.51. Excess Emissions. The definition is not tagged to stationary sources nor are time limits given. Suggest that the language be clarified and appropriate exemptions included in the rule.

IDHW Response: The rules have not been changed in response to this comment. The definition does not need to reference "stationary sources" or "time limits." The term is only used in the context of provisions regulating stationary sources and there is no time limit associated with the term.

Comment #48: Section 100.45. Emission Standard. This definition must be revised to include any requirement established by the EPA, not just the Department. Again, this definition must also reference 40 CFR Part 63 to cover all of the National Emission Standards for Hazardous air pollutants.

IDHW Response: The Department has modified this section in partial response to this comment. The Department will incorporate future federal requirements into these rules in accordance with state rule-making procedures.

Comment #49: Section 100.46. Definition of Environmental Remediation Source. Sources, which are not remediating oil or hazardous wastes, but which generate Air toxics should be included in the definition.

IDHW Response: IDHW has looked at this definition and has revised it by taking out the reference to hazardous materials. This was done because of potential conflicts with RCRA regulations. However Section 210.12 Specialized Method E: Department Approved methods can be used to allow review of a non-petroleum remediation project that may generate emissions of a toxic air pollutant. IDHW believes that this will remove potential RCRA conflicts while allowing flexibility in permitting non-petroleum remediation sources.

Comment #50: Section 100.47. Emission Unit. This definition must be expanded to indicate that it does not alter or affect the definition of the term "unit" for purposes of title IV of the Clean Air Act.

IDHW Response: The Department has incorporated the suggested modification in the rules.

Comment #51: Sections 100.47., 100.137. and 100.142. The definitions of Emissions unit, Source and Stationary Source all seem to be talking about the same thing. Choose one and use it throughout the rules.

IDHW Response: The rules have not been changed in response to this comment. This comment will, however, be considered when IDHW drafts future rulemakings regarding air quality.

Comment #52: Section 100.63. Hazardous Air Pollutant. This definition must be revised to include the pollutants listed in or pursuant to section 112(b) of the Clean Air Act. These pollutants are "hazardous air pollutants" even though they may not yet be subject to a standard under section 112.

IDHW Response: The Department has modified this section in response to this comment.

Comment #53: Section 100.68. Insignificant Activities. This definition is not used in the text of the rules and needs to be referenced therein to implement the concept. This approach is important to maintain a manageable program that is well understood by both the agency and public. New definition language was suggested.

IDHW Response: The Department has not modified this section in response to this comment. However, a subsection has been added to Section 314 that does incorporate the term "insignificant activities". This term was added to the rules solely for use in the Tier I operating permit program.

Comment #54: Section 100.71. Insignificant Activities. The item for space heating must include a size cutoff so that large central heating systems are not inappropriately exempted from permit requirements.

IDHW Response: The Department has modified this section in response to this comment.

Comment #55: Section 100.75, 100.76 Major Facility and Modifications. One commenter questioned the import of the changes to these definitions in the proposed rules. Another commenter stated that Section 100.75.b.ii and Section 100.76.c are not consistent.

IDHW Response: The Department modified the rules in response to this comment and the following comment. The Department has returned the existing definition of Major Facility. This definition is consistent with the definition of Major Modification.

A second definition of Major Facility has been placed in the new Section 103 "Definitions for the Purposes of Sections 300 through 399".

Comment #56: Section 100.75. Major Facility. This definition must be revised in a number of ways:

(1) Either the term "facility" must be used instead of "stationary source" or the definition must be substantially revised to conform with the EPA definition of "major stationary source".

(2) In subsection (a) the term "hazardous regulated air pollutant" must be changed to simply "hazardous air pollutant" and the provisions allowing EPA to establish lesser quantities for some pollutants and alternatives for radionuclides must be added.

(3) In subsection (b), the term "stationary source" must be changed to "facility," and paragraph (ii) must be revised to cover all regulated pollutants, not just those covered by the standards to comply with 50 CFR 51.166, and reference to 40 CFR Part 63 must be included. Note that this provision is now inconsistent with the

definition of "major modification" in that this definition exempts all "fugitive emissions" whereas the definition of "major modification" only exempts "fugitive dust."

IDHW Response: The Department has modified this section in response to this comment.

Comment #57: Section 100.76. Major Modification. Subsection c. must be revised to include reference to 40 CFR Part 63 in order to cover all sources regulated under section 112 of the Clean Air Act.

IDHW Response: The Department has incorporated the suggested modification into the rules.

Comment #58: Section 100.79. Member of the Public. The definition of "member of the public" as it applies to the regulation of radionuclide emissions should be amended to mean "any human being who is in any public access area, who receives the maximum potential dose exposure."

IDHW Response: The rules have not been changed in response to this comment. Changing the definition would adversely affect the regulatory scheme for radionuclides from sources regulated under 40 CFR Part 61 or 40 CFR Part 63 since the emission standards for such air pollutants are based on the effective dose equivalent for a "member of the public" as defined in the federal regulations.

Comment #59: Section 100.94. Nonattainment Area. The proposed change in this definition makes the basis for the designation less clear, and the parenthetical appears to extend the traditional reach of a non-attainment area.

This definition must be revised to include reference to Section 107(d) of the Clean Air Act. Although the state can add additional areas, it must consider as nonattainment all areas designated by EPA under section 107(d).

IDHW Response: The Department has modified this section in response to these comments.

Comment #60: Section 100.102. Process or Process Equipment. Delete the word "whatever" from the definition.

IDHW Response: The Department did not modify the rules in response to this comment.

Comment #61: The change in definition of PM-10 Emissions might be interpreted to also imply a change in reference method. We do not

support such a change, particularly in this manner. We would appreciate the opportunity to discuss the intended import of this change or the deletion of the proposed language.

IDHW Response: The Department did not change the rules in response to this comment. This definition was updated to match the federal definition of PM-10.

Comment #62: Section 100.105. Phase II Source and 100.106. Phase II Unit. These definitions must either be made consistent with the definitions of the EPA terms "affected source" and "affected unit" or replaced with those terms and their definitions.

IDHW Response: The Department has modified this section in response to this comment.

Comment #63: Section 100.110. Potential to Emit/Potential Emissions. This definition must be revised to include "facilities" as well as stationary sources since it is used primarily to determine if a facility is major. Second, the provision ensuring that this term will not alter or affect the term "capacity factor" used in title IV of the Clean Air Act must be added.

IDHW Response: The Department has modified this section in response to this comment.

Comment #64: Section 100.112. PPM (parts per million). The term "contaminant" should be changed to "air pollutant."

IDHW Response: The Department did not modify this section in response to this comment. See the definition of Air Pollutant.

Comment #65: Section 100.118.a.xx. One commenter made three related suggestions regarding the definition of "significant" as it applies to radionuclide emissions from sources regulated under 40 CFR Part 61 or 40 CFR Part 63. The commenter suggested that there should be a clearer determination of how the Department determines PSD so that a source knows whether to submit a PSD application; the designation of any radionuclide emission as significant, if total facility-wide emissions exceed an EDE of 3 mrem/yr, is overly conservative, and not based on any known scientific reasoning or regulatory precedence; and the definition should include only those radionuclide emissions that result in an EDE of at least 0.1 mrem/yr (NESHAP below-regulatory-concern level) if total facility-wide emissions are maintained below the NESHAP standard of 10 mrem/yr. Another commenter suggested that the existing definition of "significant" should not be amended, and thus, "any" amount of radionuclides would remain a "significant" emission.

IDHW Response: The rules have not been changed in response to these comments. The rules delineate application and permit to construct requirements based upon whether a proposed source is "major" and whether the proposed source is, or is located at, a facility with a potential to emit 250 tons or more of any air pollutant. If the proposed source is located at an existing major facility, it is a "modification" and the definition of "major modification" is based upon whether the proposed source has a net "significant" increase in emissions. The definition of "significant" is based on specified amounts of listed air pollutants. Therefor, an applicant should refer to the definition of "significant" and to whether the facility has the potential to emit 250 tons of air pollutants to determine what application information is required and what type of permit review will be conducted.

The regulatory scheme for radionuclides included in the definition of "significant" reflects many aspects of the federal scheme, but is also designed to meet the needs of the State of Idaho. It reflects a balancing of diverse and complex public, governmental and industry interests.

Comment #66: Section 100.118.b. One commenter suggested that Section 100.118.b be deleted because of his understanding of the provisions. He states that prior to these proposed regulations, this provision had relatively little impact since it only applied to pollutants regulated by the Clean Air Act and that now that there is no distinction between an air contaminant and pollutant in Idaho's regulations, this provision defines emission of any pollutant regulated by either the Clean Air Act or Idaho's regulations as significant.

IDHW Response: The rules have been changed in response to this comment. Without confirming the commenter's reasoning, IDHW has amended the section so that toxic air pollutants will not be "significant" emissions.

Comment #67: Section 100.118.a. The phrase "or any radionuclide emission rate, if the Department determines that Section 205 shall apply" should be deleted.

IDHW Response: The rules have been changed in response to this comment. The phrase was deleted.

Comment #68: Section 100.118.b. Prior to these proposed regulations, this provision had relatively little impact since it only applied to pollutants regulated by the Clean Air Act. Now that there is no distinction between an air contaminant and pollutant in Idaho's regulations, this provision defines emission of any pollutant regulated by either the Clean Air Act or Idaho's

regulations as significant. It is recommended that Section 100.118.b. be deleted.

IDHW Response: The rules have been changed in response to this comment. Without confirming the commenter's reasoning, IDHW has amended the section so that toxic air pollutants will not be "significant" emissions.

Comment #69: Section 100.131. Significant. Subsection (b) must be revised to include the phrase "or facility" since potential to emit applies to facilities as well as sources.

IDHW Response: The Department has incorporated the suggested modification in the rules.

Comment #70: Section 100.131. A TIER II Source. If the Tier I Source and Tier II Source are going to define the two types of permits, there should be a definition of each and more descriptive names.

IDHW Response: The Department has modified the rules in partial response to this comment. Section 302 has been moved to the general definition section of the rules. The Department has not defined "Tier II Source" in these rules. However, Section 401 describes which facilities are affected by the Tier II operating permit rules.

Comment #71: SectionS 100.146-149. These four definitions are used in many general schema for environmental calculations. Many of the conclusions are directly applicable to normal practice of agriculture and should be exempted.

IDHW Response: Agricultural activities and services are specifically exempt for new source review for toxic air pollutants.

Comment #72: One commenter noted that the rules appear to be incorporating Clean Air Act Section 114 Letter Authority by rule in Section 122 of the proposed rules. The commenter does not support this action and suggests that it is not required for an approvable Title V Program. The commenter also questions IDHW's legislative authority for the action and suggests that Section 122 be totally deleted.

IDHW Response: The rules have not been changed in response to this comment. This rulemaking is not limited to rules required for approval of the Tier I operating permit program. The Environmental Protection and Health Act grants the Board of Health and Welfare adequate authority to adopt Section 122.

Section 122 is an important aspect of this rulemaking. It will provide IDHW with the ability to obtain certain types of information from specified persons as necessary to develop, implement and enforce Idaho's air quality programs. It will drastically increase the efficiency and effectiveness of several of Idaho's air quality programs, including enforcement and the development and implementation of the area plans for the nonattainment areas. The State of Idaho and the public face severe sanctions if the nonattainment areas are not brought into attainment by the federally mandated deadlines. In addition, the United States Environmental Protection Agency's (EPA) ability to request information is very similar to the ability provided by Section 122. Section 122 will allow IDHW to request information directly from industry and other members of the public, and thus, IDHW will be able to collect necessary information without contacting or involving EPA.

Comment #73: Section 123. Certification of Documents. It appears that neither the federal regulations nor the Clean Air Act require notarization on all forms, documents, progress report, monitoring data, test data, and other information to be submitted. Requiring notarization in the proposed rules is overly burdensome and unnecessary.

IDHW Response: The rules have been changed in response to this comment. The phrase requiring notarization has been deleted and a section requiring all documents to be truthful, accurate and complete has been added to accomplish the same goal as notarization.

Comment #74: New Section 100. Permit Successions. It would be useful in administration of the air quality program to establish by regulation the relationship between permits to construct and operating permits (both Tier I and Tier II). Section 150, a new proposal, attempts to define this relationship.

IDHW Response: The Department did not make the suggested modification to the rules. However, the Department has modified Section 209.06 (now 209.05) to clarify how the permit to construct program interacts with the Tier I operating permit program. Section 401 describes how a Tier II operating permit can be used to net out of the Tier I operating permit program.

Comment #75: Section 100.161. Toxic Substances. Referring to the listed acceptable ambient impact levels as ambient air quality standards (those levels that cannot be exceeded, regardless of the source) is confusing and conflicts with what IDHW indicated the toxics regulations would apply to. The definition of these limits to the increase in ambient concentrations should be changed to more

clearly indicate that they are ambient increments, similar to PSD increments.

IDHW Response: The rules have been changed in response to this comment. The Department has incorporated the suggested modification into the rules.

Comment #76: Section 100.161. Toxic Substances. Other sections of the regulations deal more specifically with emissions of toxics. This section is unnecessary since the other regulations are more specific and should be deleted.

IDHW Response: The rules have not been changed in response to this comment. This sections contains the definition of toxic substances on which the other sections are based. In addition this section allows the IDHW the option of addressing a situation that may present a threat to public health or the environment by imposing a Tier II operating permit. IDHW believes that this section is basic to the state's efforts to protect the environment and human health by controlling toxic air pollutants.

Comment #77: Section 161. TOXIC SUBSTANCES. The structure of this provision is confusing. Paragraphs .02 and .03 should be subparagraphs under the provision in paragraph .01 (i.e. delete the number .01, and renumber .02 and .03 to .01 and .02, respectively).

IDHW Response: The rules have been changed in response to this comment. This Section has been rewritten to be clearer.

Comment #78: Section 121.01. This paragraph should be clarified to specify that the schedule prepared by the source is a "proposed" compliance schedule.

IDHW Response: The rules have been changed in response to this comment. The Department has incorporated the suggested modification into the rules.

Comment #79: Section 130. UPSET CONDITIONS, BREAKDOWN. This provision is not approvable as a part of the Idaho SIP as it fails to comply with the requirements of the Clean Air Act for violations of applicable SIP emission limits.

IDHW Response: The Department did not modify the rules in response to this comment.

Comment #80: Sections 140 through 149. VARIANCES et seq. These sections are not approvable as revisions to the Idaho SIP. First,

EPA does not approve "variances" to Idaho rules. EPA can approve revisions to the Idaho SIP which have been adopted by the Department and submitted to EPA, including variances that the Director has granted pursuant to this provision. As such, this section must be revised significantly. Furthermore, the variance provisions must either be inapplicable to Title V sources, or the rules must clarify that a variance must be accomplished through a revision to the source's Title V permit.

IDHW Response: The Department has replaced "EPA" with "Department" to correct this section. Sections 300 through 399 have been revised to clarify the requirements that apply to facilities affected by the Tier I operating permit program.

Comment #81: Section 141.02. Petitions. It is unclear what the term "petitioner and other..." refers to. Modified language is suggested.

IDHW Response: The Department has modified this section in response to this comment.

Comment #82: Section 145.03 Authorization of Hearing. Suggested that this section could be more clearly worded.

IDHW Response: The Department has modified this section to clarify that the Department, not EPA, may authorize a hearing. The suggested modification has been incorporated into the rules.

SECTION 200

Comment #83: Section 200 Procedures & Requirements for Permits to Construct. The proposed rules do not contain guidelines as to how the State of Idaho will develop MACT standards, if the EPA misses its deadline to develop MACT standards (Section 112 (j) of the Clean Air Act). As a result, we recommend that the Department issue guidance on how they will determine MACT standards, if and when the EPA does not meet its deadline, these Procedures should be developed through rulemaking.

This incrementalism approach will end up costing industry more to comply because they will go ahead with an addition, approved under a new source review permit but then have to make major modifications to that new source as part of the operating permit later on.

IDHW Response: The rules have not been changed in response to this comment. As EPA finalizes its various implementations procedures for §112(g) and 112(j) IDHW will respond appropriately. Until these federal rules and guidance are done, IDHW considers it inappropriate to attempt to develop rules by trying to guess what

EPA might do. When IDHW develops its responses to federal requirements IDHW will comply with all state and federal guidelines for public participation.

IDHW has built in a high degree of flexibility onto these rules in order to assist industry in complying with required controls. However, given the unsettled nature of new source MACT, IDHW has chosen to defer this issue until EPA finalizes and promulgates regulations in this area.

Comment #84: Section 201. Put the original effective date (January 24, 1969) into the regulation to eliminate any confusion as to what date it is.

IDHW Response: The rules have been changed in response to this comment. The phrase "after the original effective date of Sections 200 et seq." was deleted.

Comment #85: Section 201. Permit to Construct Applicability. As stated in previous comments to the Department on an earlier draft of these proposed revisions, the changes to the permit to construct rules which are being made to incorporate the hazardous air pollutant sources will adversely impact the currently-approved SIP provisions for criteria pollutant sources. If adopted as currently proposed, EPA would be required to disapprove these rules and the Idaho permit to construct program.

As discussed in my letter of June 29, 1993 (copy attached), the proposed revisions to the permit to construct applicability provision will not be approvable as revisions to the Idaho SIP for a number of reasons.

(1) The new exemptions for Category I, II, III, and IV sources inappropriately relaxes the currently approved SIP, and fails to comply with the requirements of section 110(a)(2)(C) of the Clean Air Act and 40 CFR Part 51, Subpart I of EPA regulations. Specifically, the four categories are not mutually exclusive and therefore would allow a source to be exempted under one provision where another provision would require a permit.

IDHW Response: The Department has not modified the rules in response to this comment. Categories I through III specifically require that the source not cause or significantly contribute to a violation of an ambient air quality standard. Category IV sources are either already exempted from obtaining permits to construct in the currently effective rules or are activities that the Department has historically not regulated.

The exemptions were not designed to be mutually exclusive. If a source qualifies under any of the categories, it is exempt from obtaining a permit to construct. The Department carefully examined sources and activities that have been exempted from obtaining a permit to construct in the past. This information was used to develop the categories in these rules.

Comment #86: (2) Broad discretionary exemptions such as 201.01.g., 202.02.d.i., etc. are not approvable.

IDHW Response: The Department has modified the rules in partial response to this comment. However, the Department has exercised discretion to exempt sources from obtaining a permit to construct under existing rules (16.01.01012,02.h). The Department is not aware of any concern expressed by EPA in its use of the discretion allowed by this rule.

Comment #87: (3) Section 201.02.a. exempts all major sources by using the term "Not."

IDHW Response: The Department has modified this section in response to this comment.

Comment #88: (4) The reference in 201.03. to "Section 200 et seq." should be changed to 201.03 since the source need not verify compliance with all of Sections 200 to 299, only the provisions of 201.03.a. through d.

IDHW Response: The Department has modified this section in response to this comment.

Comment #89: (5) In subparagraph (vi), the phrase "agricultural activities and services" is used, whereas the definition section defines only "agricultural activities." Also, the clarification of what are not agricultural activities (i.e. manufacturing, bulk storage and handling for resale or formulating any listed chemical) should be moved to the definition section unless this exempted activity is intended to be narrower than all "agricultural activities"

IDHW Response: The Department has modified the definition of Agricultural Activities.

Comment #90: (6) The permit to construct applicability provisions must ensure that all new, modified, or reconstructed stationary sources subject to any standard under sections 111 or 112 of the Clean Air Act are required to obtain a permit to construct. Idaho's Title V operating permit program cannot be approved unless it demonstrates that it can implement and enforce all of the requirements of sections 111 and 112 for subject sources, including the requirements for preconstruction review and initial source compliance determinations.

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IDHW Response: The Department has not modified the rules in response to this comment. The Department is committed to updating the rules in accordance with future federal rule-making.

Comment #91: Sections 201.01.f, 201.02.d.i, 201.03.d.ii: Category I, II, and III Sources. The State requirements should be consistent with the Federal NESHAP requirements in 40 CFR 61.96 Applications to Construct or Modify.

IDHW Response: The rules have not been changed in response to this comment. The regulatory scheme for radionuclides reflects many aspects of the federal scheme, but is also designed to meet the needs of the State of Idaho. It reflects a balancing of diverse and complex public, governmental and industry interests.

Comment #92: Section 201.02.iii-iv. Each of these sections represent the use of equipment essential to some phases of agriculture. These engines are potentially used in remote or populated locations. As such, an agricultural exempted may be appropriate.

IDHW Response: An agricultural activities and services exemption is provided for in Section 220 Category IV exemption

Comment #93: Section 201.03.d. Pilot Plants. Pilot plants pose a serious potential risk of radiation exposure. and should not have any exclusions from PTC requirements.

IDHW Response: The rules have not been changed in response to this comment. To qualify for an exemption, pilot plants may have no emissions of a radionuclide for which a National Emission Standard for Hazardous Air Pollutant (NESHAP) exists. The IDHW considers this adequately protective.

Comment #94: Section 201.04. Each of the above sections would be more clearly defined and interpreted if an agricultural exemption consistent with Idaho Environmental Protection and Health Act, Idaho Code Sections 39-101 et seq. (1993), which is clearly incorporated into this rule making.

IDHW Response: An agricultural activities and services exemption is provided for in Section 220 Category IV exemption

Comment #95: Section 201.04.c Permits to Construct, Category IV Exemptions. Section viii. needs to be expanded to allow the Director to exempt sources other than "equipment." This will allow the concept of "insignificant activities" which was earlier defined

but never used in the text of the rule, to be compiled into a publicly available list. This would allow the list to be compiled over time in a less expensive fashion than listing all insignificant sources in the rule. The additions list should be published annually in the Idaho Administrative Bulletin.

IDHW Response: The Department has modified this section in partial response to this comment. It should be noted that Insignificant Activities have been defined solely for the purposes of the Tier I operating permit program.

Comment #96: Section 201.04.c. Grain storage and handling facilities do not always fit cleanly under the agricultural exemption for a number of reasons.A new section should be added to exempt Country Grain Elevators under the 1 million bushel PSD size in PM-10 attainment areas.

IDHW Response: The Department has not modified the rules in response to this comment. Because there are no enforceable limits on the potential to emit from these facilities, the Department cannot exempt them from the requirement to obtain a permit to construct.

Comment #97: Section 202. APPLICATION PROCEDURES. The phrase "by the owner or operator" should be replaced with "in accordance with Section 123" now that section 123 sets out who must be the certifying official for permits to construct. Furthermore, Section 202.01.c. should be expanded to include a reference to 205.07

IDHW Response: The Department has incorporated the suggested modification into the rules.

Comment #98: Section 203. The old Section 203 stated that IDHW shall conduct a T-Ract evaluation for specific sources within 180 days, while Section 209 requires that a proposed permit be issued or denied within 60 days after the permit is declared complete. Recommended that the time frame in Section 209 take precedence.

IDHW Response: The rules have been changed in response to this comment. New Section 210.07 provides the applicant with two alternative procedures and timelines. Under Section 210.07.a, the applicant will submit the information regarding T-RACT in her initial application and IDHW will issue a permit action in accordance with the timelines in Section 209. Under Section 210.07.b, the applicant may supplement her application and the timelines in Section 209 will be reinitiated when a complete supplemental application is received.

Comment #99: Section 202.b.viii. Application Procedures. The list of Ambient concentrations is hard to read.

IDHW Response: The rules have not been changed in response to this comment. The form of the rules is dictated by the Office of the Administrative Rules Coordinator.

Comment #100: Section 203.03.c and d Adjustment Factors. Incorporate language to allow use of the adjustment factors for applicability determinations.

IDHW Response: The rules have not been changed in response to this comment. This concept is inherent in the language of the existing section.

Comment #101: Section 203.03 through 05. Recognize that these provisions for new and modified air toxics sources do not meet the requirements of section 112(g) of the Clean Air Act. When EPA's regulations to implement section 112(g) are promulgated, Idaho will have to substantially revise and tighten these requirements.

IDHW Response: The rules have not been changed in response to this comment. The IDHW rules concerning toxic air pollutants are for the control of toxic air pollution from new and modified sources and were not drafted with the intent of mirroring potential federal regulations. Additionally, the EPA has not finalized its guidance on §112(g) yet so IDHW believes that this comment is premature. As EPA promulgates further 112(g) guidance, IDHW will propose legislation to respond to these future federal requirements. IDHW acknowledges that this may entail extensive revisions of these rules.

Comment #102: Section 203.04. T-RACT. Best Available Control Technology (BACT) should not be changed to Reasonably Available Control Technology for Toxics (T-RACT). Some thought that T-RACT should not be available in non-attainment areas. (There were multiple comments expressing this sentiment)

IDHW Response: The rules have not been changed in response to this comment. The change from BACT in the old TAP policy to RACT in the proposed rules will allow a greater degree of flexibility, both economic and technological, in complying with the various emissions and ambient levels of the toxic air pollution (TAP) regulations. BACT is a term applied to prevention of significant deterioration (PSD) in classified airsheds and as such is not directly relatable to toxics. This change in control technology will address a small segment of carcinogenic emissions falling between the one in a million and one in a hundred thousand risk levels. It will have no effect on non-carcinogens. Emissions of carcinogens of greater

risk than one in a hundred thousand will not be allowed regardless of the control technology used. In real application, T-RACT as defined and implemented will closely approximate BACT

The assumptions that the IDHW uses when figuring these risk levels are conservative, that is, likely to err on the side of caution. These assumptions protect the maximally exposed individual as opposed to the average exposed individual. It is the position of the IDHW that given the combination of these very conservative assumptions and the limited segment of potential emissions that this change will cover, these changes represent a feasible compromise between the needs of industry and protection of public health.

Nonattainment for air quality pertains to a number of criteria pollutants (oxides of nitrogen and sulfur, particulates, etc.) and does not pertain to TAP. Therefor this concern is not directly relevant to the proposed TAP rules.

Comment #103: **Section 203.04 T-RACT Determination. A few commenters suggested that the economic feasibility aspects of the T-RACT determination are an unreasonable burden on industry and could be used arbitrarily. They asserted that old Section 203.04.e requires the applicant to determine the economic feasibility of every control technology approved by the Department and that this could be quite expensive and time consuming. If there are only one or two options worth considering, an economic analysis should only be done for them. Provisions to allow the applicant and the Department to agree on what control technology scenario will be evaluated should be included.**

IDHW Response: The rules have been changed in response to this comment. Without confirming the reasoning of the commenters, IDHW deleted old Section 203.04.e. The proposed rules and the rules that are submitted for adoption both provide that the applicant is to submit proposals that are technologically and economically feasible; not proposals that are technologically or economically feasible.

Comment #104: **Section 203.05.a. Emissions Screening. Since this requirement is only meant to address new sources, the language needs to be modified to reflect that.**

IDHW Response: The rules have been changed in response to this comment. This section has been rewritten to be more clear.

Comment #105: **Some commenters expressed concerns that the toxics provisions should apply only to new sources and that "the limiting factor is the additional quantity of a specific toxic in the atmosphere that results from operation of the proposed new source."**

Existing background should be taken into account when permitting new sources. Are the incremental increases to become part of background to be ignored if another addition was made in the future ad infinitum.

IDHW Response: The rules have been changed in response to this comment. On the issue of clarifying that the toxics policy applies to new sources and modifications, IDHW has rewritten and an reorganized sections to make this more clear. That the current toxics policy and the proposed rules deal with new sources and modifications only has been the IDHW position since the inception on the toxics policy in 1989.

The concern that the incremental increase will become part of the background is addressed the definition of Net Emissions Increase, §102.07 of the revised rules. This definition excludes this possibility and has been applied to Section 209.

IDHW acknowledges the tensions between the ability of industry to operate effectively and efficiently and the public's right to a safe and clean environment. It is IDHW's position that the rules changes noted above strikes a middle ground between these needs.

Comment #106: **Air toxic impacts, both non-carcinogenic and carcinogenic, should only be evaluated at or beyond the facilities property boundary, even if the public has access to the property. The words "or the closest point of public access" should be deleted.**

IDHW Response: The rules have been not changed in response to this comment. Section 209.b. (which replaces 203.05.c.) allows the use of the point of greatest impact located at or beyond the facility property boundary nearest the source or closest point of public access. Generally, people going to a source on business are not considered part of the "public" while on the property. Therefor, parking lots and the like will not generally be considered the closest point of public access.

Comment #107: **Section 203.05.f. This section is redundant as the concept is already addressed in 203.05.h. and should be deleted.**

IDHW Response: The rules have been changed in response to this comment. Section 203 has been reorganized to make it clearer and in so doing, subsection 203.05.f has been deleted.

Comment #108: **Section 203.05.g. Unit Risk Factors are based on a 70-year exposure. This is not appropriate for an industrial park situation that will never be a residential application. The refined analysis should be liberalized to include a different model, actual meteorological data, more appropriate risk factors, actual hours of operation, more accurate emissions factors obtained**

through source testing, more accurate annual potential to emit scenarios and any other justifiable refinements. New wording for this section has been suggested to reflect this.

IDHW Response: The rules have been changed in response to this comment. IDHW agrees that for industrial areas that will never be used for residential purposes, a 70 year risk base may be conservative. However, it is hard to predict future land use patterns. Examples of unforeseen new land uses with significant environmental and human health concerns have become quite common.

IDHW has based its emission numbers on the best available data. IDHW has strived to take a balanced approach taking into account the needs of industry to operate and the need to protect human health and the environment. Since it is not possible to account for such real life factors as lifetime exposures, additive or multiplicative effects of exposures to the large variety of industrial chemicals in use in Idaho, it is necessary to make our emissions standards generally applicable and reasonably conservative.

It is not possible for IDHW to carve out special exemptions or emissions factors for potential or hypothetical new or modified industrial sources or exposure scenarios. Our rules must take a balanced approach that is generally applicable and consistently applied. IDHW can not develop special emissions factors specifically for industry dominated areas. IDHW believes that the revised Section 210.02 Quantification of Emissions Rates and Ambient Concentrations, which allows site specific data gives adequate flexibility in compliance with toxic standards.

Comment #109: Section 203.05.j Screening Emissions Tables. Commenter recommends that ammonia be eliminated from the list of toxic pollutants or, alternatively, that emission levels for ammonia applicable to the danger caused by high concentrations and which also recognize the harmless effect of low concentrations be established. This request is based on a number of issues. First, ammonia was deleted from the EPA "189 list". Second, ammonia is generally considered relatively non or mildly toxic in very low concentrations. Third, ammonia is regulated under SARA Tile III for accidental release. Fourth, substantial releases of ammonia come from animal wastes and other organic materials. Fifth, the control of ammonia at the levels specified in the proposed rules would be severely burdensome for industry, particularly the fertilizer and sugar beet industries.

IDHW Response: The rules have not been changed in response to this comment. IDHW disagrees that Ammonia should be unregulated in Idaho. IDHW also declines to modify its screening emissions levels (EL) and acceptable ambient (AAC) concentration for ammonia.

In general, IDHW basis its non-carcinogenic standards on the work and occupational exposure limits developed by the American Conference of Government Industrial Hygienists. These standards

are set relative to the toxicity of the compound in question so the relatively low toxicity of ammonia is already reflected in the numbers.

In addition, IDHW has identified a specific procedure for developing ELs and AACs that is consistent for all sources and compounds. IDHW believes that deviating from this procedure would be unfair to other applicants and the public and introduce too much subjectivity into the process.

IDHW will address the specific areas of concern cited in the request to remove ammonia from the rules:

First, ammonia was deleted from the EPA "189 list". IDHW has reiterated its position on the "189 list" on numerous occasions. However, in brief the IDHW does not consider this to be a valid point because the "189 list" is a result of a political process on the national level. The "189 list" represents a list of pollutants that have significant national concern. The "189 list" was never meant to necessarily protect environments on a local level. Congress has made it clear the "189 list" and the Title III/ NESHAP program was not meant to replace state air toxics programs. Consequently, IDHW disagrees that the presences or absences of a compound on the EPA "189 list" is necessarily relevant to the Idaho TAP program.

Second, ammonia is generally considered relatively non or mildly toxic in very low concentrations. IDHW agrees that this is a valid point. However as mentioned above, the EL and AAC for this compound has taken the level of toxicity into account. In addition, 22 state and local air pollution control agencies have set standards for ammonia in air, some less stringent and some more stringent than Idaho. In addition, the Division of Health has been consulted and has recommended that ammonia continue to be regulated on the basis of its significant irritant effects.

Third, ammonia is regulated under SARA Title III for accidental release. SARA Title III is concerned with the catastrophic release of large quantities of dangerous chemicals and the communities right to know that these chemicals are being used and stored nearby. SARA Title III does not regulate these chemicals but only requires reporting of their presence. IDHW does not consider this to be excessive "double regulation". The intent of the IDHW TAP program and SARA Title III are very different so IDHW disagrees that this sort of "double regulation" is either unwarranted or unreasonable.

Fourth, substantial releases of ammonia come from animal wastes and other organic materials. While IDHW agrees that this is true, IDHW disagrees that this point is germane. The intent of the rules concerning toxic air pollutants is to control the emissions of toxics air pollutants from new and modified sources. Agricultural activities and services are generally exempted from the toxics rules.

Fifth, the control of ammonia at the levels specified in the proposed rules would be severely burdensome for industry, particularly the fertilizer and sugar beet industries. IDHW is very sensitive to the potential economic impacts of these proposed rules and economic impacts are always considered. However, these regulations apply to new and modified sources only. IDHW does not agree that economic effect on the regulated community will be so severe so as to out weigh their environmental benefit. Further, IDHW does not believe that it is appropriate carve out regulatory exemptions for the economic benefit of a particular industry or industries.

Comment #110: Section 203.05(j). Remove Phosphorous pentoxide from the Table in Section 203 .05(j).

IDHW Response: The rules have not been changed in response to this comment. The IDHW believes that our regulation of this chemical is both reasonable and responsible. Phosphorus pentoxide is an irritant and is being regulated on that basis.

Phosphorous pentoxide is listed on the EPA extremely hazardous substance list; It is listed in the Toxic Substances Control Act (TSCA) Substances Inventory; It is listed by the Department of Transportation (DOT) as a corrosive material; Sax's Dangerous Properties of Dangerous Materials. Vol. III. Eighth Ed. Richard J. Lewis, Sr. New York: Van Norstrand Reinhold 1992. 2795. notes that it is a "Poison by inhalation. A corrosive irritant to the eyes, skin and mucous membranes"; The Hazardous Substances Data Base (HSDB) produced by Micromedix, Inc. Vol. 16 notes that "Particles of solid Phosphorous pentoxide in contact with eye react vigorously, & even small amounts may cause burns of lids, conjunctivae, & corneas, producing blue-white opacities, which may be permanent."

Since phosphorous pentoxide in quite hydrophilic and rapidly forms phosphoric acid, the ACGIH Threshold Limit Value (TLV) of 1mg/m3 for phosphoric acid was used. In addition the HSDB reports that Patty's Industrial Hygiene and Toxicology: Volume 2A, 2B, 2C: Toxicology. 3rd Ed New York: John Wiley Sons, 1981-1982. recommends a Hygienic Std. of 1mg/m3.

Comment #111: Section 203.05.j. and 203.05.k. There should be short term ambient standards for non-carcinogens (8 and or 24 hr. standards). A formula for the development of such standards was submitted.

IDHW Response: The rules have been changed in response to this comment. An annual averaging period will be used for both screening and refined models for all toxic air pollutants. The issue is complex and important enough to deserve clarification.

The acceptable ambient concentrations (AAC) are not ambient air quality standards. Rather they are acceptable increments of

toxic air pollutants that are responsibly protective of human health and reasonably permissive of industrial expansion. Because the AAC are not ambient standards the air quality management techniques of averaging collective emissions to some total ambient build up do not apply.

In the design of this rule, the AAC relates to a stack emission rate. In the most prescribed sense, the AAC would be assured by a permitted emission limit. This emission limit then might be guaranteed by some ample control technology design or perhaps an operational limit prescribed in the permit.

Comment #112: Section 203.05.j. and 203.05.k. There is inadequate health based data for the ambient levels set. OSHA standards "were struck down in court" as a result of "OSHA's unlawful rule making" because OSHA's standards were not based the "significant risk" and "feasibility" requirements of the OSHA statutes" our ambient standards were on "...very shaky legal ground..."

IDHW Response: The rules have not been changed in response to this comment. The IDHW bases its non-carcinogenic levels on work done by the American Conference of Government Industrial Hygienists (ACGIH), not OSHA. The ACGIH is a respected health effects research body and the IDHW has every confidence in ACGIH data. For carcinogens, the IDHW used published unit risk factors from EPA and supporting data from the National Institutes of Health and the International Agency for Research on Cancer (IARC). It does not seem reasonable for IDHW to attempt to "reinvent the wheel" in the face of so much available data. To do so would be an astronomical undertaking, far beyond the capabilities of most if not all state governments.

Comment #113: Section 203.05.j. and 203.05.k. Standards derived from those of other states should be removed.

IDHW Response: The rules have not been changed in response to this comment. IDHW has included substances on our lists that we feel have valid health concerns. Some of these substances do not have Occupational Exposure Levels (OEL) published by an agency such as the ACGIH. However they do have substantial health data. On occasion, some states have looked at some of these chemicals and developed emissions and or ambient standards. We have no reason to believe that states such as Washington or New York are frivolous or capricious in their risk assessment actives. Quite the contrary, we consider other states to be responsible agencies subject to oversight by their respective legislatures, industry groups and the public, much like Idaho.

The IDHW then looks at these standards to see if we consider them reasonable, based on the available literature and other criteria. If we find that to be the case we may then adopt these standards or modify them as the data warrant. If, in the future,

the ACGIH develops standards differing from the standards we have adopted, we will seek to modify our rules accordingly.

Comment #114: **Section 203.05.j. and 203.05.k. Are some of the compounds on Appendix 1 are suspected carcinogens?**

IDHW Response: The rules have been changed in response to this comment. It is the policy the IDHW to regard any substance that is considered a B2 ranking by EPA (or equivalent ranking by IARC) a carcinogen for purposes of regulation. A B2 carcinogen is one that has sufficient animal evidence. C (or equivalent ranking by IARC) ranked compounds have limited animal evidence and inadequate or less human evidence. The IDHW does not believe that C ranked carcinogens have sufficient data available to support the regulatory scheme required by carcinogens. Therefore some compounds on Appendix 1 may be suspected carcinogens in other references. In addition, some carcinogens were mistakenly listed on both appendices. These errors have been corrected.

Comment #115: **Section 203.05.j. and 203.05.k. The range of allowable emissions of carcinogens is too narrow and the accuracy of the models used to calculate potential risks is inadequate.**

IDHW Response: The rules have not been changed in response to this comment. The narrow range of allowable carcinogenic risk reflects a upper limit of one in a hundred thousand, above which the IDHW considers risk to be unacceptable. The IDHW considers this to be reasonable and in line with risk acceptability of other states and the EPA.

The IDHW acknowledges that models used to calculate potential risk are not exact and that there are variations in the appropriateness of the models vis a vis specific applications. The IDHW has tried to allow maximum flexibility in model selection by requiring only that the model must be EPA approved and must be reviewed for appropriate application by the IDHW. The IDHW considers that EPA approval and IDHW review of all models used is a reasonable requirement.

Comment #116: **Section 203.05.j and 203.05.k Screening Emissions Tables. The publication in the rules of OEL and URF values that are based on continually changing OSHA, and EPA exposure criteria will contribute to confusion and errors in use of the most current (and appropriate) criteria.**

For modeling analyses, URFs should be taken from the EPA IRIS database, which is updated on a monthly basis. OELs should be taken from their source documents - either OSHA PELs, ACGIH TLVs, or NIOSH RELs, which are updated on an annual basis. The regulations should either reference these sources or include a statement to the effect that the OEL, URF, AAC, and AACC values may

change (based on the latest revision to the source) without requiring change to these regulations.

IDHW Response: The rules have not been changed in response to this comment. IDHW believes that annual updates through rulemaking and emergency rulemaking, if necessary, will provide an adequate and reasonable method to keep the appendices updated. Providing the appendices as part of the rules insures consistency. In addition, the Administrative Procedures Act of Idaho prohibits language that automatically incorporates by reference the latest edition of a reference. A specific document must be incorporated. IDHW would also note that this aspect of the rules was partially in response to industry's strongly stated desire to have the various references made part of the rules so that there would be regulatory consistency.

Comment #117: Section 205.06 - The cited Section 205.01.b. should be Section 205.01.b.ii.

IDHW Response: The Department did not modify this section in response to this comment. The cites are correct.

Comment #118: Section 209. PROCEDURE FOR ISSUING PERMITS. This section should perhaps be moved to after Section 400, et seq, since it applies to both permits to construct and tier II permits. In addition, the second reference to "major modification" in 209.01.c. must be changed to "modification." Finally, the last sentence in 209.05 must be deleted since permits to construct do not expire and are not "renewed" like operating permits.

IDHW Response: The Department has modified the rules in response to this comment. The sections in 209 that also apply to Tier II permits have been incorporated into Section 404.

Comment #119: Section 209 provides no time frame for conduction public comment periods or hearings after a proposed permit to construct is issued for major facilities or modifications. Language is suggested.

IDHW Response: The Department has not changed the rules in response to this comment. The Department makes every effort to conduct public comment periods and hearings in a timely manner.

Comment #120: Emissions Screening levels should take into account such realistic assumptions as reactivity of gaseous air toxics and deposition rates of dusts. It was suggested that the values be recalculated using these realistic assumptions.

IDHW Response: While IDHW agrees that gas reactivity and deposition rates of dusts are real world occurrences, it is impossible to use these assumptions in figuring emissions screening levels because of their site specific nature. Reactivity of gases varies considerably with different circumstances. For instance, the concentration of hydroxyl radicals in the atmosphere, the amount of sunlight present and various aspects of reaction kinetics are items that have a significant effect on atmospheric gas reactivity. Deposition rates of dusts and other particles can vary greatly with circumstances such as wind velocity and precipitation rates.

Comment #121: Section 209.01. This section should provide for language to a permit to be automatically deemed complete if the Department does not notify the applicant of incompleteness within 60 days, similar to Section 342.03

IDHW Response: The Department has not modified the rules in response to this comment. The rules provide for a completeness determination within 30 days. The Department has not had a permitting backlog for four years. Therefore, the Department believes that the suggested modification is unwarranted.

SECTION 300

Comment #122: Section 302.05. This provision must be expanded to include source categories designated by EPA.

IDHW Response: The Department has not modified this section (although it has been moved to section 101) in response to this comment. The Department is committed to updating the rules in accordance with future federal rule-making.

Comment #123: Section 313. Timely Application. We recommend that Section 342.02.a. be reworded to require one-third of Tier I facilities to submit their application before the end of the 12-month period, to enable the first third to be processed by the end of the 12-month period.

IDHW Response: The Department has modified the rules in response to this comment. Sections 313 and 367 have been modified to clarify how the Department will act on applications during the transition period.

Comment #124: Section 313.02. Preconstruction Permits. The Federal Program allows states to provide for concurrent processing of pre-construction permits and operating permits, provided that the procedural requirements of both programs are met. We recommend that applicants in Idaho be given this option.

IDHW Response: The Department has modified Section 209 in response to this comment. Subsection 209.05 describes the permit to construct procedures for Tier I sources.

Comment #125: Section 313.04. Renewal Applications. For purposes of permit renewal, redefine timely renewal application, a timely application is one that is submitted at least six months prior to the date of expiration, unless the applicant requests and the operating permit specifies a longer period (not to exceed 18 months).

IDHW Response: The Department has modified the rules in response to this comment. Sections 313 and 367 have been modified to clarify how the Department will act on applications during the transition period.

Comment #126: Section 313.04. In accordance with 40 CFR 70.5(a)(a)(iii), the State must require that applications for permit renewals be submitted between 6 and 18 months before expiration of the permit. Requiring renewal applications to be submitted more than 18 months before expiration is not approvable. This provision needs to be reworded to ensure that the application is submitted no earlier than 18 months prior to expiration and no later than (some time between 6 and 18) months prior to expiration.

The rules defining a timely application will be hard on commenter because of the need for very rapid turn around time needed in the semiconductor business.

IDHW Response: The Department has modified the rules in response to these comments. See Section 313.03.

Comment #127: Section 314.02. Standard Application Form and Required Information. Please clarify what type of description is required by this section. The Department should include in a Checklist or detailed Instructions on the level of detail and what criteria the Department will use to determine whether any response to this requirement is "complete."

The description of the source's products and processes must include information about the applicable SIC codes.

IDHW Response: The Department has modified the rules in response to these comments. Subsection 314.02.b clarifies that the description must include narrative and applicable SIC codes.

The Department has developed a completeness checklist and a draft Tier I operating permit guidance manual. These documents are available on request to the Department. The guidance manual will not be finalized until after the rules are final.

Comment #128: Section 314.04.a. Emissions Information. The application must also include information on all air pollutants, that are not also regulated air pollutants, for which the source is major. The Department must also have authority to require additional information to determine the applicability of applicable requirements for all air pollutants, not just regulated air pollutants and as necessary to collect any permit fees. In addition, the reference to exempted units must be more specific than simply "Section 314, et seq."

IDHW Response: The Department has modified this section in response to this comment.

Comment #129: 314.04.a. Emissions Information. This section requires specification of emissions of regulated air pollutants emitted from any non-exempt emissions unit. this requirement should be limited to information about "relevant emissions units," meaning only those emissions units that are subject to applicable requirements.

IDHW Response: The Department has not modified the rules in response to this comment. The Department must receive information as described in the preceding comment. Section 314 has been revised to clarify what information must be submitted in the Tier I operating permit application.

Comment #130: 314.04.a. Emissions Information. The second sentence of Section 314.04 states that the Department shall require additional information related to the emissions of regulated air pollutants sufficient to verify which requirements are applicable. This should be written in the form of a requirement for the applicant, rather than an instruction to the Department, to avoid having the Department requesting additional information after the application has been submitted. Suggested language is submitted.

IDHW Response: The Department has deleted this sentence.

Comment #131: Section 314.04.b. and 314.05.b. Emission Information. This section refers to requirements of the "Act." This should be a reference to the "Clean Air Act," since Title V permits are required to implement the applicable requirements of the Clean Air Act (which includes requirements under an approved SIP or preconstruction program). Requirements that applicable to the source pursuant to the (State) Act or these Rules only, are to be segregated from those requirements that are federally enforceable "applicable requirements" under the Federal Clean Air Act.

IDHW Response: The Department's modifications to the rules address this comment. See sections 314.04 and 322.17.j.

Comment #132: Section 314.04.c. Emission Information. We recommend using "applicable standard reference test method, if any" instead of "applicable test method."

IDHW Response: The Department has not modified this section in response to this comment. If there is no applicable test method, then the applicant will not have to identify terms necessary to establish compliance with the applicable test method.

Comment #133: Section 314.04.f. Emission Information. Since Title V operating permits address "regulated air pollutants," this requirement should be so limited.

IDHW Response: The Department has not modified the rules in response to this comment. The applicant is required to submit information regarding all air pollutants that are regulated by the Clean Air Act. In addition, any applicant that has a permit to construct that addresses Toxic Air Pollutants will be required to submit information regarding those emission.

Comment #134: Section 314.08. Additional Information. This section should include, in addition to "alternate operating scenarios," other provisions, such as emissions trading and emissions caps, allowed by the Clean Air Act. These alternate provisions, if incorporated into the permit, may be implemented without a permit revision.

Alternative Operating Scenarios. This section should clearly provide intent of alternative operating scenarios and include permit allowances for emissions trading, emissions caps, or other optional requirements pertinent to maintaining operational flexibility.

The last phrase needs to be revised to clarify that the additional information relates to permit terms and conditions allowing for emissions trading and cross reference the appropriate Idaho bubble rules.

IDHW Response: The Department has modified Section 314 to include a section relating to alternative operating scenarios (314.09) and a section relating to trading scenarios (314.12).

Comment #135: Section 314.09. Pursuant to 40 CFR 70.5(c)(8)(iv), the compliance plan must also include a schedule for submission of certified progress reports no less frequently than every 6 months for every source required to have a compliance schedule to remedy a violation.

Section 314.11.c. Certification of Compliance. Compliance certifications will require an enormous commitment of resources because of the certifications as to accuracy and completeness required of a senior official. Requiring certification more frequently than annually will be costly and will serve little purpose. We recommend that the Idaho Program be consistent with the Federal Program, except where the applicant and the Department have agreed to a more frequent certification in a compliance schedule.

Section 314.11.d. This paragraph must be revised to require a statement indicating "whether" the source is in compliance, not "that the source is in compliance."

IDHW Response: The Department has rewritten the sections covering Compliance Certifications and Compliance Plans (now Sections 314.10 and 314.11). These sections were rewritten to improve the organization and to clarify what information is required. The modifications to these sections address these comments.

Comment #136: Section 314.13. The phrase "activities which are exempted from permitting requirements of Sections 200 et seq." must be changed to "insignificant activities." The requirements of Title V (operating permits) of the Clean Air Act are completely different from the requirements of Title I (new source review) and the exemptions for construction permits are not approvable as exemptions from operating permits. Also, in the case of insignificant activities, the source must also submit such information as is necessary to demonstrate that the exemption applies.

IDHW Response: The Department has deleted this section. New Section 314.04.b has been added to clarify that Insignificant Activities need only be listed in the Tier I operating permit application. The Department believes that the list of Insignificant Activities is specific enough that sources do not need to demonstrate that the definition applies.

Comment #137: Section 315. Duty to Supplement or Correct Application. One commenter notes that Section 315 provides that the Department may request additional information deemed to be necessary to evaluate or take final action on the application and recommends adding language to allow the applicant to file a contested case, if the applicant believes the information is not authorized by law or the rules, or is not reasonably necessary to evaluate or take final action on the application.

IDHW Response: The rules have not been changed in response to this comment. Completeness determinations are based on a limited review of the application so IDHW often needs to request additional information from applicants in order to conduct the full review of

the application and issue a permit action. The request is not a final action, and thus, it is not appealable as a contested case. Applicants may respond to the request from IDHW by explaining why the applicant believes the information has already been provided or why the information is unnecessary. If IDHW agrees with the applicants explanation, IDHW continues with the review. If IDHW disagrees, it notifies the applicant and the applicant may provide the information or IDHW will deny the permit application. A denial of the permit application is an appealable action.

Comment #138: Section 317. Permit Continuance. For additional clarity, this paragraph should cross reference the provision which gives sources the ability to operate without a permit if the source submitted a timely application.

IDHW Response: The Department has deleted this section and has modified Section 301 (see 301.02.a) to clarify that sources may continue to operate if the source is in compliance with Sections 311 through 315.

Comment #139: Section 322. Standard Permit Requirements. The permit must also require the reporting of deviations from permit requirements and must define promptness in relation to the degree and type of deviation likely to occur and the applicable requirements in accordance with 40 CFR 70.6(a)(3)(iii)(B).

IDHW Response: The Department has not modified this section in response to this comment. Section 326 covers deviations from permit requirements and provides time frames for reporting for each type of excess emission event.

Comment #140: Section 322.01. Standard Permit Requirements. The permit must include emission limitations that assure compliance with all applicable requirements even if such requirements are identified after submission of the application.

IDHW Response: The Department has not modified this section in response to this comment. However, Section 315 requires the applicant to promptly provide information regarding requirements that become applicable after the date a complete application was file by prior to the release of a proposed action.

Comment #141: Section 322.03. Standard Permit Requirements. This provision needs to be revised to clarify that there must be at least one permit term for each requirement.

IDHW Response: The Department has incorporated the suggested modification into the rules.

Comment #142: Section 322.04. Alternative Operating Scenarios. Commenter commends IDHW for incorporating the alternative operating scenario provisions, and is recommending that two phrases be added to clarify that the source must outline reasonably foreseeable operating scenarios in its permit application for IDHW to approve them as a part of the operating permit.

IDHW Response: The Department has not modified the rules in response to this comment. The Department does not want to be put in the position of deciding whether or not an applicant could reasonably foresee operating under a proposed operating scenario. Maximum flexibility requires that the Department to base approval of alternative operating scenarios based on their compliance with underlying requirements not on whether or not a facility would ever operate under the requested scenario.

Comment #143: Section 322.04. Alternative Operating Scenarios. The reference to operating scenarios approved in accordance with Section 314.08 is confusing because Section 314.08 does not address the approval of such scenarios, only the information to include in an application. The permit must also include provisions that assure compliance with all applicable requirements for each such scenario.

IDHW Response: The Department has modified this section in response to this comment.

Comment #144: Section 322.10.e. Compliance Certifications. The state is the only regulatory agency, so the reference for sending certifications to EPA could be deleted.

IDHW Response: The Department has not modified the rules in response to this comment. This section is required by 40 CFR 70.6(c)(5)iv.

Comment #145: Section 322.13. Tier II Applicable Requirements. This provision must be deleted since no Tier II requirements can be applicable to Tier I sources. A source is either subject to Title V of the Clean Air Act or it is not.

IDHW Response: The Department has deleted this section.

Comment #146: Section 322.14. Provisions Stating the Following. This section lists provisions that are included in the permit. A subsection needs to be added that allows PTC/PSD permits to be automatically included into the operating permit. Without this, a PTC/PSD permit could be obtained but the modification could not take place until the operating permit was also changed. Rather

than have the delay and duplication of two separate permitting activities there should be one activity.

IDHW Response: The Department did not modify the rules in response to this comment. Sections 209.05 and 385 cover the relationship between these two programs.

Comment #147: Section 322.14(f). Provisions Stating the Following. It is unclear whether requiring all information requested under Section 122 is as broad as 40 CFR 70.6(a)(6)(v). This could perhaps be clarified by the Attorney General opinion.

IDHW Response: The Department has not modified the rules in response to this comment. The Attorney General opinion on the final rules will cover this issue.

Comment #148: Section 322.14(h). Provisions Stating the Following. This provision is contrary to 40 CFR 70.6(f) and Section 325 of the Idaho regulations in that it doesn't provide that the permit is a shield only as to applicable requirements listed in the application and expressly determined in writing by the permitting authority not to be applicable.

IDHW Response: The Department has deleted this section. The Department has rewritten Section 325 to clarify the shield provisions and to replace instructional language with actual language.

Comment #149: Section 322.15. Provisions Prohibiting. The last clause should be revised to clarify that it refers to a "modification under any provision of 42 U.S.C. Section 7401 to 7515."

IDHW Response: The Department has modified this section to prohibit facility alterations without complying with Sections 380 through 387.

Comment #150: Section 322.17. TIER I Limits. This section seems to render everything federally enforceable. This section should be modified to differentiate between State enforceable regulations and Federally enforceable regulations. Suggested language is included.

IDHW Response: The Department has modified this section (now 322.17.j) in response to this comment.

Comment #151: Section 322.20. Provisions Requiring Registration Fees. As discussed below, Idaho must demonstrate that all Tier I sources are subject to Sections 525 through 538. For example, it

is not clear that Tier I sources which are major only for hazardous air pollutants would be subject to registration fees.

IDHW Response: The Department has not modified this section in response to this comment.

Comment #152: Section 322.22. Permit Duration. The phrasing is awkward and could possibly be revised to state: "...a permit term of five years; except...." Also, the provision allowing for permits of shorter duration during the first four years after EPA approval cannot be applicable to acid rain sources.

IDHW Response: The Department has modified this section (now 322.15) in response to this comment.

Comment #153: Section 326. Excess Emissions. One commenter has suggested substantial additions, deletions and modifications to Section 326.

Section 326.01. This provision is not approvable and will preclude EPA from approving Idaho's Title V operating permit program. An upset must still be considered a violation. A state may, however, provide reasonable procedures for the exercise of enforcement discretion for upsets. Also, exercise of enforcement discretion for scheduled maintenance, start up and shut down is strictly limited. Idaho's provision is far too broad.

Section 326.03(a). By linking reporting to detection, the rule is much more permissive than Idaho's existing upset rule, which links reporting to occurrence. By linking reporting to detection, they can always say they didn't know about the upset. This provision must be revised to be consistent with the current requirements.

Section 326.03.d. This section allows the Division to shut down an entire facility if one emissions unit is the cause of excess emissions. The conditions under which an entire facility will be shut down should be well defined. Prior to the last sentence before i., add: "The decision regarding whether to shut down a facility will be based on the amount the rest of the facility contributes to excess emissions. Under no circumstances will an entire facility be shut down, if the shut down of the emissions unit resolves the problem."

IDHW Response: The Department has modified Section 326 in response to these comments. Most of the suggested modifications have been incorporated into this section. For suggested changes to sections 329.03 e-g, the Department has responded by editing these sections and deleting the "avoidable" and "absolve" clauses. The Department has retained the ability to revoke or modify the procedures because the approval will be issued with 48 hours to allow continued operations so there will be very limited review. The ability to revoke or modify will allow the Department to more liberally grant approvals initially because the Department can revoke or modify the

approval if new information becomes available, the permittee abuses the approval, or if the public objects.

Comment #154: Section 326.04. Excess Emissions. Allowing sources to send written notice within 15 days is more liberal than their current upset provision, which requires written notice by the end of business on the next working day. This provision must be revised to be consistent with the current requirement.

IDHW Response: The Department has not modified this section in response to this comment. For startup, shutdown and scheduled maintenance, the permittee is required to notify the Department no later than 2 hours prior to the start of the excess emissions event. For upset and breakdown, the permittee must notify the Department of the event no later than 24 hours after occurrence. The permittee is then required to submit a written report for each excess emissions event no later than 15 days after the beginning of the event.

Comment #155: Section 326. Excess Emissions. The section on permit content must include a provision meeting 40 CFR 70.6(b) regarding designation of state only requirements in the Tier I permit.

IDHW Response: The Department has modified the rules in response to this comment. See Section 322.17.k.

Comment #156: Section 342.03. Action on Applications. Section 342.03 provides that the Department shall promptly provide notice to the applicant of whether the application is complete and that, unless it is within the one year after EPA approves Idaho's Tier I Operating Permit Program or the Department requests additional information, or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. Commenter recommends that the completeness determination be made with 60 days of submission of the application, regardless of when the application is submitted and that the permit shield be extended, and an application check list be provided.

This provision is contrary to 40 CFR 70.7(a)(4) in that it suspends the 60 day automatic completeness for applications submitted within one year after EPA approval of the program.

IDHW Response: The Department has modified the rules in response to this comment. See Section 361.

Comment #157: Section 342.01. Action on Applications. Clauses (b) and (c) appear to apply to the same actions, but use different

language. Making them consistent would avoid any possible ambiguity.

IDHW Response: The Department has modified these sections in response to this comment.

Comment #158: Section 342.01(f). Action on Applications. This provision does not appear to relate to any other subparagraphs in Section 342.01. It seems awkwardly placed. In addition, it is unclear whether this provision also includes increases in emissions of acid rain authorized by allowances, which, pursuant to 40 CFR 70.6(a)(4), must also be allowed without permit revision.

IDHW Response: The Department has deleted this section.

Comment #159: Section 342.02(a). Action on Applications. This provision also appears awkwardly placed, since it does not relate to the lead in provision of 342.02. Perhaps 342.02(a) should be renumbered 324.02, and the rest of what is now Section 342.02 should be renumbered 342.03.

IDHW Response: The Department has modified the rules in response to this comment.

Comment #160: Section 342.02.c and 342.06. Action on Applications. The definition of complete application allows open time limit if the Department determines application is not complete within 60 days. This section should require the Department to take final action on any complete Tier I operating permit application within six months of the permit application submittal.

IDHW Response: The Department has not modified the rules in response to this comment. Assuming that a complete application has been submitted, the Department must make a completeness determination within 60 days. Once the completeness determination has been made the Department must produce a draft Tier I operating permit within 60 days. The Department must provide a 30 day public comment period. The Department must then respond to comment and prepare a proposed permit within 30 days. The proposed permit will be sent to EPA for review period not to exceed 45 days. Therefore the expected time from submittal of a complete application to issuance of a final permit is seven and a half months barring any appeals.

The Department will reexamine the time required to take final action on a permit in the third year of the transition period. If warranted, the Department will shorten the 18 month deadline for final action on complete applications.

Comment #161: Section 342.02(d). Action on Applications. For clarification, this sentence should be revised: "Submittal of Tier I operating applications for and the permitting of...."

IDHW Response: The Department has modified this section in response to this comment.

Comment #162: Section 342.04. Action on Applications. This provision should be revised to clarify that the memorandum must set forth the "legal and factual basis" for the proposed permit.

IDHW Response: The Department has modified the rules in response to this comment. See Section 362.

Comment #163: Section 342.05. Action on Applications. For further clarity, this provision should be revised to make clear it refers to a complete Tier I application.

IDHW Response: The Department has modified the rules in response to this comment. See Section 361.03.

Comment #164: Section 342.06. This provision does not include the requirement that a responsible official must certify the submitted information.

IDHW Response: The Department has modified the rules in response to this comment. See Section 314.01.

Comment #165: Section 343.03.a. Permit Renewal & Expiration. While 343.03.a includes Tier II operating permits, 343.03.b. does not. Suggested language is included.

Section 343.03. and (b). This provision must be revised to clarify that the application must be both timely and complete. Furthermore, the references to "permit to construct" and "Tier II operating permit" must be deleted as Sections 300 et seq. do not apply to those permits.

IDHW Response: The Department has modified this section (now 368) in response to this comment.

Comment #166: Section 344. Off Permit Changes. The Department has included provisions incorporating this requirement in its draft regulations. Commenter is asking that additional language be added to specifically authorize trading of emission increases and decreases, and to otherwise accommodate SIP-authorized emissions trading. Additional language is included.

IDHW Response: The Department has modified the rules in response to this comment. See Sections 314.12 and 322.05.

Comment #167: Section 344. Off Permit Changes. Entitling this provision "off permit" changes is confusing, because Part 70 refers to changes of the type referred to in Section 322.16 as "off permit" changes. Changes of the type referred to in this paragraph are authorized under 40 CFR 70.4(b)(12). It may help to clarify Idaho's Title V program if all provisions allowing for operational changes outside the permit revision process were in the same place, such as off-permit changes, 502(b)(10) changes, and other operational flexibility provisions. Currently, some such provisions are here and some are either also or only in the permit content provision. This paragraph must also be revised to expressly exclude acid rain sources from making changes of the type permitted under this Section 344. In addition, this paragraph uses the term "emissions allowable under the permit," but that terms is not defined in Idaho's regulations. The term "emergencies" should also be defined.

IDHW Response: The Department has made modifications to the rules that address this comment. The Department has created a new section entitled "Alterations". The purpose of this section is to clarify what changes are allowed, the procedures that must be followed for each alteration, and the permit shield applicability of each type of alteration.

The Department has added or expanded the definitions mentioned in the comment. See Section 103.

Comment #168: Section 345. Administrative Permit Amendments. This provision can not apply for the acid rain portion of the permit. Instead, such amendments shall be governed by acid rain regulations.

IDHW Response: The Department has modified the rules in response to this comment. See Section 384.01.b.

Comment #169: Section 346. Minor Permit Modification Procedures. This provision can not apply for the acid rain portion of the permit. Instead, such modification shall be governed by acid rain regulations.

IDHW Response: The Department has modified this section (now 385) in response to this comment.

Comment #170: Section 346. Minor Permit Modification Procedures. IDHW has adopted minor permit modifications procedures. Commenter concurs with this approach, and has suggested some additional

language to make the purpose of the minor permit modification procedures more apparent. Commenter has also suggested a provision to allow group processing of minor modifications.

IDHW Response: The Department has modified this section (now 385) in response to this comment. The Department has added provisions allowing group processing of minor modifications (Section 385.07).

Comment #171: Section 346.01(d)(i). Minor Permit Modification Procedures. This provision must be clarified to provide that the emissions cap must be federally enforceable. Also, is the reference to "act" to Idaho law or to the Clean Air Act. The reference should include Title I modifications.

IDHW Response: The Department has not modified the rules in response to this comment.

Comment #172: Section 346.03. Minor Permit Modification Procedures. This provision must also require the State promptly to send any notice required under 40 CFR 70.8(b)(2).

IDHW Response: The Department has added this provision to the rules. See Section 385.04.

Comment #173: Section 346.04. Minor Permit Modification Procedures. This provision must be revised to provide: "Within 90 days of the Department's receipt of a complete application under the minor permit modification procedures or within 15 days after the end of EPA's 45 day review period, which ever is later,..."

IDHW Response: The Department has modified the rules in response to this comment. See Section 385.04.

Comment #174: Section 346.05. Minor Permit Modification Procedures. Based on the idea that the source also needs to comply with both the applicable requirements governing the change and the proposed permit terms and conditions until the Department takes action on 364.04.d. Commenter submitted new language.

IDHW Response: The Department has modified this section in response to this comment and to use terms consistent with the new Section 380.

Comment #175: Section 346.06. Minor Permit Modification Procedures. The permit shield does not apply to minor permit modifications at any time per 40 CFR 70.7(2)(vi).

IDHW Response: The Department has modified this section (now 385.06) in response to this comment.

Comment #176: Section 346. Minor Permit Modification Procedures. This section does not contain the requirements set forth in 40 CFR 70.7(e)(2)(iv) on the prohibition on issuance until after EPA review.

IDHW Response: The Department has modified the rules in response to this comment. See Section 385.04.

Comment #177: Section 348.01. Reopening For Cause. Subparagraphs (c) and (g) appear redundant. Also, the program must allow for reopenings for new requirements for acid rain sources in accordance with 40 CFR 70.7(f)(ii).

IDHW Response: The Department has modified this section (now 387) in response to this comment.

Comment #178: Section 348.02. Reopening For Cause. This provision must provide that reopenings shall be as expeditiously as possible. In the alternative, this assurance could be made elsewhere in the program submittal.

IDHW Response: The Department has modified this section (now 387.03) in response to this comment.

Comment #179: Section 349.03. Reopening For Cause by EPA. This provision should be revised to provide that the 90 days runs from receipt of an EPA objection.

IDHW Response: The Department has modified this section (now 387.05) in response to this comment.

Comment #180: Section 350.05. Public Participation. The language "...unless the director deems that additional time is required..." should be changed to provide for a 90 day maximum.

IDHW Response: The Department has not modified the rules in response to this comment. The Department makes every effort to respond to public comment expeditiously.

SECTION 400

Comment #181: Section 401. TIER II OPERATING PERMIT. Section 401.01. must be revised so that it applies to sources that are

subject to Section 300 et seq. not just Section 525. Tier II operating permits must be available to all sources which are not subject to Tier I operating permits and the applicability provisions of Section 525 are not the same as for Tier I operating permits. Furthermore, the parenthetical phrase must be revised because a source doesn't "net out" of applicability but rather limits its potential to emit to levels below the applicability provisions.

IDHW Response: The Department has modified this section in partial response to this comment. The Department has not changed the "net out" language.

Comment #182: Section 401.02. TIER II Operating Permit. Section 02. requires "that anyone with a permit to construct which establishes any emission standard different from those in these rules" to acquire a Tier II permit. If the Permit to Construct is valid for the life of the source then the emissions limitations included in the permit are also enforceable for the life of the source and nothing is really gained by the process of applying for additional permits. Section 03. is sufficiently broad to cover nearly any other circumstances. Delete section 02. and renumber the subsequent sections.

IDHW Response: The Department has not modified this section. This requirement is in the currently effective rules. Permits to construct do not have expiration dates but are superseded by operating permits issued after the permit to construct was issued.

Comment #183: Section 408.03. Conditions for TIER II Operating Permits. This section requires that all tier II operating permits be reissued every 5 years. The director, under section 401.03, has a great deal of discretion to modify or revise a Tier II permit. A permit to construct is issued for the life of the source. Delete Section 03. and renumber section 04.

IDHW Response: The Department has not modified this section. This requirement is in the currently effective rules.

Comment #184: Section 402. APPLICATION PROCEDURES. The phrase "by the owner or operator" should be replaced with "in accordance with Section 123" now that section 123 sets out who must be the certifying official for permits to operate. Furthermore, the reference to Section 300 must be replaced with Section 400.

IDHW Response: The Department has modified this section in response to this comment.

Comment #185: Section 402. APPLICATION PROCEDURES. The structure of this provision is confusing. Since all of section 402 applies to Tier II permits, the lead in to Section 402.01 should perhaps be revised to state: "An application for a Tier II permit must contain the following:" Also, the reference to Section 200 in 402.03 should be changed to Section 400 et seq.

IDHW Response: The Department has modified Section 402 to incorporate all applicable requirements from Sections 200 through 299.

Comment #186: Section 403. REQUIREMENTS FOR ALTERNATIVE EMISSION LIMITS (BUBBLES), Section 404. REQUIREMENT FOR BANKING EMISSION REDUCTION CREDITS (ERC'S), Section 405. REQUIREMENTS FOR EMISSION REDUCTION CREDIT and Section 406. DEMONSTRATION OF AMBIENT EQUIVALENCE. The structure of this part of the state's regulation is strained since Sections 400 et seq. apply to Tier II operating permits yet these Sections cover both Tier I and Tier II operating permits. These Sections should be relocated after Sections 400 - 499, since they apply to all sources, not just sources subject to Tier I operating permits.

IDHW Response: The Department has relocated these sections in response to this comment. See Sections 440, 441, 460 and 461.

Comment #187: Section 403.04. REQUIREMENTS FOR ALTERNATIVE EMISSION LIMITS (BUBBLES). This section needs to refer to all of the National Emission Standards for Hazardous Air Pollutants, not just those in 40 CFR Part 61 but those in Part 63 as well.

IDHW Response: The Department has modified this section in response to this comment.

Comment #188: Section 407.03. Procedures for Issuing Permits. Idaho may wish to consider using the term "permit revision" rather than "permit modification"

IDHW Response: The Department has modified this section in response to this comment.

Comment #189: Section 408.02. Conditions for Tier II Operating Permits. To ensure enforceability, this provision should specify a time period within which the source must provide the Department with a copy of the test results.

IDHW Response: The Department has not modified the rules in response to this comment. The Department can specify time periods for submission of test results in the Tier II operating permit.

Comment #190: Section 997. CONFIDENTIALITY OF RECORDS. One commenter noted that the Idaho rules which are incorporated by reference into these rules in Section 997 do not meet the requirements of 40 CFR Part 70 and Section 114 of the Clean Air Act. The rules must be revised in order for Idaho's Tier I operating permit program to receive full federal approval. In addition, another commenter noted that under Section 316 Tier I operating permit applicants may claim confidentiality for application information.

IDHW Response: The rules have been changed in response to this comment and to more accurately reflect the language and intent of current Idaho statutes. Old Sections 316 and 997 have been deleted and replaced with new Section 126. Section 126 provides procedures for a person to request IDHW to treat information as confidential information, requires Tier I operating permit applicants and permittees to submit copies of confidential information directly to EPA and clarifies that all information is subject to disclosure in accordance with Idaho Code §§ 39-111 and 9-301 et seq.