

Open Burning of Crop Residue State Implementation Plan (SIP) Revision



**Idaho Department of Environmental Quality
May 2011**

Draft

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1. Introduction

This revision to Idaho's State Implementation Plan (SIP) is submitted pursuant to Section 110 of the Clean Air Act (42 USC § 7410).

1.1. Background

The new crop residue burning rules have been in effect since 2008. After the second year of burning under the new rules, it became apparent that some smaller crop residue burns could and should be regulated differently than large-scale, high-fuel-content burns. This SIP revision addresses small fuel loading and small acreage burns, including propane flaming, spot burns, burns of 1 acre or less, and broken bale burns.

The Idaho Department of Environmental Quality (DEQ or Department) determined that the administrative requirements on both the grower and DEQ for these types of burns were unnecessarily burdensome when compared to the minimal potential air quality impact. This SIP revision streamlines the administrative requirements for the growers and DEQ for these small burns while retaining the control measures necessary to ensure air quality protection.

1.2. Public Comment, Hearing, and Authority

DEQ initiated negotiated rulemaking in June 2010 to develop a streamlined process for small crop residue burns. The text of the rule was drafted by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. Participants in this rulemaking included growers desiring to burn crop residue, members of the regulated community who may be subject to Idaho's air quality rules, special interest groups, the Idaho State Department of Agriculture, tribes, public officials, and members of the public who have an interest in the regulation of air emissions.

During the negotiated rulemaking, a necessary change to the Statute authorizing the crop residue burning program was identified. House Bill 40, included as Appendix A, was drafted and approved by the Legislature and signed by Governor Otter effective July 1, 2011. House Bill 40 amends the existing law relating to the open burning of crop residue to provide an exemption to the fee requirement for propane flaming, as defined by the Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01).

The resulting temporary rule was adopted by the DEQ Board of Environmental Quality on April 25, 2011. Pursuant to the Idaho Administrative Procedures Act, the rule docket was published in the Administrative Bulletin as a temporary and proposed rule on June 1, 2011 (Idaho Code § 67-5221 and 67-5226). The complete rule docket is included in Appendix B.

2. Description of Temporary and Proposed Rule

The temporary and proposed rule establishes a streamlined process for small crop residue burns and alternative permitting methods.

2.1. Spot and Baled Agricultural Residue Burn Permit

The spot and baled agricultural residue burn permit is an annual permit (based on the calendar year) that DEQ issues to the grower for his entire farm (i.e., applies to multiple fields). The grower is required to submit a registration and fee. The permit will identify all the fields that are

covered by the annual permit. The grower is allowed to burn up to 1 acre or 2 tons of baled residue on any given designated burn day and no more than 10 acres or 20 tons of baled residue per year. DEQ will issue a physical permit to the grower that will include specific conditions in accordance with IDAPA 58.01.01.621.02. The grower must also comply with applicable general provisions and reporting requirements (see section 2.3 below).

2.2. Propane Flaming Permit

According to the temporary and proposed rule, the propane flaming permit only applies to the “use of flame-generating equipment to briefly apply flame and/or heat to the topsoil of a cultivated field of pre-emerged or plowed-under crop residue with less than 550 pounds of burnable, non-green residue per acre.” The permit does not require any registration or fee to be submitted. The permittee is deemed to have a permit by rule if he or she complies with the general provisions and recordkeeping requirements listed in section 2.3 below. DEQ will not issue a physical permit for propane flaming under the temporary and proposed rule.

DEQ used the “Picture your Residue” brochure, published by the U.S. Department of Agriculture’s Soil Conservation Service, to estimate pounds of residue per acre (USDA SCS 1992). Figure 1 depicts a wheat field with 550 pounds of residue per acre. A field with less than this amount of residue would be allowed to be propane flamed under the propane flaming permit, while a field with more than this amount of residue would require a standard crop residue burning permit to be propane flamed. Figure 2 depicts a field with greater than the 550 pounds of burnable, non-green residue per acre.

2.3. General Provisions and Reporting Requirements

The general provisions and recordkeeping requirements, as stated in Section 624.04 in the temporary and proposed rule (Appendix B), apply to both the spot and baled agricultural residue burn permit and propane flaming permit and are included below.

General Provisions

- The permittee is responsible to ensure that adequate measures are taken so that the burn does not create a hazard for travel on a public roadway.
- Burning is not allowed if the proposed burn location is within 3 miles of an institution with a sensitive population and the surface wind speed is greater than 12 miles per hour or if the smoke is adversely impacting or is expected to adversely impact an institution with a sensitive population.
- Burning shall not be conducted unless the Department has designated that day a burn day, which for the purposes of Section 624 may include weekends and holidays, and the permittee burns within the burn window provided on the Department’s website at www.deq.idaho.gov. Spot and baled agricultural residue burns shall not smolder and create smoke outside of the designated time period burning is allowed.

Recordkeeping

- Permittees shall record the date, time frame, type of burn, type of crop, and amount burned on the data of the burn. Records of such burns shall be retained for 2 years and made available to the Department upon request.



Figure 1. Visual estimation of 550 pounds of crop residue per acre



Figure 2. Visual estimation of 790 pounds of crop residue per acre

3. Effect of Temporary and Proposed Rule on Ambient Air Quality Protection in Idaho

DEQ conducted a rule change analysis (Table 1) to determine the effect of the temporary and proposed rule on air quality protection in Idaho. The rule change analysis compared the current open burning of crop residue rule to the temporary and proposed rule. DEQ evaluated whether a current requirement was still applicable. If a current requirement was changed or no longer applicable, DEQ evaluated the effect that change had on daily and annual emissions and overall air quality protection.

The temporary and proposed rule only applies to spot or bale burning and propane flaming of fields with very little residue. The rule change does not result in an increase in daily or annual emissions because the burns addressed by the temporary and proposed rule would be conducted regardless of the rule change.

The control measure for all open burning of crop residue is the burn approval criteria, IDAPA 58.01.01.621.01. DEQ will be able to estimate the maximum amount of emissions from the burns permitted under the temporary and proposed rule and incorporate those emissions into the burn approval criteria (see Table 1 for details). This control measure is still applicable for the spot or bale burning and propane flaming of fields.

The administrative changes included in the temporary and proposed rule will not result in an increase in daily or annual emissions (burns) nor affect the control measure (i.e., DEQ's burn approval criteria) for the open burning of crop residue, as demonstrated by the rule change analysis (Table 1). Therefore, the temporary and proposed rule does not affect ambient air quality protection in Idaho.

4. Request for U.S. Environmental Protection Agency Approval of this SIP Revision

The information provided in this document, including House Bill 40 (Appendix A), the Rule Docket No. 58-0101-1001 (Appendix B), and the rule change analysis (Table 1), meets the requirements necessary to satisfy a SIP revision pursuant to Section 110 of the Clean Air Act. This SIP revision has been conducted in accordance with Idaho's transparent crop residue burning program and resulted from an open negotiation process. Under this SIP revision, control measures and daily and annual allowable emissions remain unchanged. Thus, DEQ requests that the U.S. Environmental Protection Agency approve this SIP revision.

5. References

USDA SCS (U.S. Department of Agriculture, Soil Conservation Service). 1992. Picture your residue. SCS Crop Residue Management Brochure. Washington, DC: USDA SCS. SCS-CRM-02.

Table 1. Rule change analysis for the open burning of crop residue (IDAPA 58.01.01.618–624)

Current Rule	Temporary and Proposed Rule		Change in Daily and Annual Emissions
	Spot and Baled Agricultural Residue	Propane Flaming	
618. Permit By Rule, General Requirements, Forms —All persons shall be deemed to have a permit by rule if they comply with all the provisions of Section 618 through 623. No person shall conduct an open burn of crop residue without obtaining the applicable permit by rule.	618. (Modified) —Those persons applying for a spot burn, baled agricultural residue burn, or propane flaming permit shall comply with the provisions in Section 624.	618. (Modified) —Those persons applying for a spot burn, baled agricultural residue burn, or propane flaming permit shall comply with the provisions in Section 624.	This change is administrative and has no effect on emissions.
619. Registration for Permit by Rule —All burning of crop residue is required to receive a permit by rule prior to burning. Applicant must provide location of property; applicant information; plot plan; type, acreage, and fuel characteristics of residue; preventative measures; and date of burning.	624.02.a (New) Registration and Fee Requirements —Annual registration is required—limited to 10 acres per year and 1 acre per day (624.02.a and b). Registration includes only location of property and applicant information.	624.03 (New) Propane Flaming Permit —No registration is required.	This change is administrative and has no effect on emissions.
620. Registration Fee —Fees shall be paid at least 7 days prior to the proposed burn date. Rule provides the address where fees shall be sent.	620. (Modified) —Refers readers to section 624.02.a for fee requirements for the spot and baled agricultural residue burn permit. 624.02.a (New) Registration and Fee Requirements —Nonrefundable fee of \$20 paid at least 14 days prior to the date of the first proposed burn.	620. (Modified) —Refers readers to section 624.02.a for fee requirements for the spot and baled agricultural residue burn permit. 624.03 (New) Propane Flaming Permit —Not applicable—no fee is required for propane flaming.	This change is administrative and has no effect on emissions.

Current Rule	Temporary and Proposed Rule		Change in Daily and Annual Emissions
	Spot and Baled Agricultural Residue	Propane Flaming	
<p>621. Burn Determination—Burning is allowed only if air quality levels are not expected to exceed 75% of any national ambient air quality standard and 80% of the 1-hour action criteria for particulate matter.</p>	No change—this is still applicable.	No change—this is still applicable.	No change—this is still applicable.
<p>01. Burn Approval Criteria—the Department shall consider the following factors:</p> <ul style="list-style-type: none"> • Expected emissions of other burns • Proximity of other burns • Moisture content of residue • Meteorological conditions • Proximity to institutions with sensitive populations • Proximity to public roadways • Proximity to airports • Other relevant factors 	No change—this is still applicable. This section identifies how DEQ makes burn decisions for all approved crop residue burns. DEQ will be able to estimate the maximum amount of burning under this permit from the number and location of permits issued under this process. This estimate will be used when DEQ makes all burn decisions for open burning of crop residue.	No change—this is still applicable. This section identifies how DEQ makes burn decisions for all approved crop residue burns. DEQ will be able to estimate the maximum amount of smoke produced by propane flaming due to the 550 lb/acre of residue loading limit. DEQ will account for these expected emissions when making burn decisions for open burning of crop residue.	No change—this is still applicable.

Current Rule	Temporary and Proposed Rule		Change in Daily and Annual Emissions
	Spot and Baled Agricultural Residue	Propane Flaming	
02. Notification of Approval —DEQ provides written notification of approval on its website with specific conditions.	<p>624.02. (New) Spot and Baled Agricultural Residue Burn Permit—Permittee will receive a physical permit that is valid for the calendar year of issuance. This permit will include the requirements included in 621.02.a–d and will be posted on DEQ’s website.</p> <p>The permittee will not receive written approval for each individual burn; rather the permittee must burn on a designated burn day within the designated burn window and in accordance with all requirements on their annual permit.</p>	Approval not required, therefore this section is not applicable.	This change is administrative and has no effect on emissions.
622. General Provisions			
01. Burn Provisions			
a. No burning on weekends, state or federal holidays, or after sunset or before sunrise	624.04.c (New) Designated Burn Day —Permittee is allowed to burn on weekends and state or federal holidays if it is a designated burn day.	624.04.c (New) Designated Burn Day —Permittee is allowed to burn on weekends and state or federal holidays if it is a designated burn day.	No change in annual emissions—these emissions would occur on another day.
b. Must burn on a designated burn day	No change—this is still applicable.	No change—this is still applicable.	No change—this is still applicable.
c. Must have a portable form of communication	Not required	Not required	This change is administrative and has no effect on emissions.
d. Burning must occur in field where residue was generated	No change—this is still applicable.	No change—this is still applicable.	No change—this is still applicable.

Current Rule	Temporary and Proposed Rule		Change in Daily and Annual Emissions
	Spot and Baled Agricultural Residue	Propane Flaming	
e. Limitations on Burning—Permittee is required to extinguish fire or withhold additional material unless DEQ determines that the burn will not have an adverse impact on institutions with sensitive populations.	624.04.b (New) —All burning under this permit has the following requirements: “Burning is not allowed if the smoke is adversely impacting or is expected to adversely impact an institution with a sensitive population.”	624.04.b (New) —All burning under this permit has the following requirements: “Burning is not allowed if the smoke is adversely impacting or is expected to adversely impact an institution with a sensitive population.”	There is no change to this requirement. The temporary and proposed rule provides the same protection for institutions with a sensitive population; therefore, no change in emissions.
f. Training Sessions—Required every five years	No change—this is still applicable.	No change—this is still applicable.	No change—this is still applicable.
g. Air Stagnation or Degraded Air Quality—No burning under these conditions	No change—this is still applicable.	No change—this is still applicable.	No change—this is still applicable.
h. Allowable Forms of Open Burning	No change—this is still applicable.	No change—this is still applicable.	No change—this is still applicable.
i. Additional Burn Permits	No change—this is still applicable.	No change—this is still applicable.	No change—this is still applicable.
j. Reporting to Department—Postburn reports must include burn date, burned acres, and location of acres burned.	624.05 (New) Recordkeeping —The following postburn recordkeeping is required: date, time frame, type of burn, type of crop, and amount burned. This is required to be retained on site for 2 years.	624.05 (New) Recordkeeping —The following postburn recordkeeping is required: date, time frame, type of burn, type of crop, and amount burned. This is required to be retained on site for 2 years.	This change is administrative and has no effect on emissions.
k. Specific Conditions—The open burning of crop residue shall be conducted in accordance with the specific conditions in the permittee’s permit by rule. <i>(This requirement is added in the temporary and proposed rule.)</i>	Applicable as added in the temporary and proposed rule.	Not required—these growers will not receive a physical permit.	This change is administrative and has no effect on emissions.

Current Rule	Temporary and Proposed Rule		Change in Daily and Annual Emissions
	Spot and Baled Agricultural Residue	Propane Flaming	
02. Annual Report	No change—this is still applicable.	No change—this is still applicable.	No change—this is still applicable.
03. Advisory Committee	No change—this is still applicable.	No change—this is still applicable.	No change—this is still applicable.
623. Public Notification			
01. Designation of Burn Days —DEQ shall designate for a given county or airshed burn or no-burn days.	No change—this is still applicable.	No change—this is still applicable.	No change—this is still applicable.
02. Posting on Website —DEQ shall post daily on its website the following information: daily burn decision by county; location and number of acres permitted to be burned; meteorological conditions and any real-time air quality data; and a toll-free number to receive requests for information.	DEQ will post daily on its website the daily burn decision by county. This daily burn decision will include whether the given day is a burn day or not and the designated burn window. All spot and baled agricultural residue permits will be posted on DEQ’s website.	DEQ will post daily on its website the daily burn decision by county. This daily burn decision will include whether the given day is a burn day or not and the designated burn window. A physical permit is not issued for propane flaming. Therefore, no permit will be posted on DEQ’s website.	This change is administrative and has no effect on emissions.
03. E-Mail Update Service	No change—this is still applicable.	No change—this is still applicable.	No change—this is still applicable.

Appendix A: House Bill 40

HOUSE BILL 40

[Full Bill Information](#)

Individual Links:

[Bill Text](#)

[Statement of Purpose / Fiscal Note](#)

H0040.....by ENVIRONMENT, ENERGY, AND TECHNOLOGY COMMITTEE

ENVIRONMENTAL QUALITY - Amends existing law relating to the burning of crop residue to provide an exception to the imposition of a specified fee.

01/25 House intro - 1st rdg - to printing

01/26 Rpt prt - to Env

02/03 Rpt out - rec d/p - to 2nd rdg

02/04 2nd rdg - to 3rd rdg

02/08 3rd rdg - **PASSED - 66-0-4**

AYES -- Anderson, Andrus, Barbieri, Barrett, Bateman, Bedke, Bell, Bilbao, Block, Bolz, Boyle, Buckner-Webb, Burgoyne, Chadderdon(Chadderdon), Chew, Collins, Crane, Cronin, DeMordaunt, Ellsworth, Eskridge, Gibbs(Wheeler), Guthrie, Hagedorn, Hart, Hartgen, Harwood, Higgins, Jaquet, Killen, King, Lacey, Lake, Luker, Marriott, McGeachin, McMillan, Moyle, Nessel, Nielsen, Nonini, Palmer, Patrick, Pence, Perry, Raybould, Ringo, Roberts, Rusche, Schaefer, Shepherd, Shirley, Simpson, Sims, Smith (30), Smith(24), Stevenson, Takasugi(Batt), Thayn, Thompson, Trail, Vander Woude, Wills, Wood(27), Wood(35), Mr. Speaker

NAYS -- None

Absent and excused -- Bayer, Black, Henderson, Loertscher

Floor Sponsor - Harwood

Title apvd - to Senate

02/09 Senate intro - 1st rdg - to Agric Aff

03/01 Rpt out - rec d/p - to 2nd rdg

03/02 2nd rdg - to 3rd rdg

03/03 3rd rdg - **PASSED - 34-0-1**

AYES -- Andreason, Bair, Bilyeu, Bock, Broadsword, Cameron, Corder, Darrington, Davis, Fulcher, Goedde, Hammond, Heider, Hill, Keough, LeFavour, Lodge, Malepeai, McGee, McKague, McKenzie, Mortimer, Nuxoll, Pearce, Schmidt, Siddoway, Smyser, Stegner, Stennett, Tippetts, Toryanski, Vick, Werk, Winder

NAYS -- None

Absent and excused -- Brackett

Floor Sponsor - Nuxoll

Title apvd - to House

03/04 To enrol

03/07 Rpt enrol - Sp signed

03/08 Pres signed

03/09 To Governor

03/10 Delivered to Governor on 03/09

03/11 Governor signed

Session Law Chapter 51

Effective: 07/01/11

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 40

BY ENVIRONMENT, ENERGY, AND TECHNOLOGY COMMITTEE

AN ACT

RELATING TO THE BURNING OF CROP RESIDUE; AMENDING SECTION 39-114, IDAHO
CODE, TO PROVIDE AN EXCEPTION TO THE IMPOSITION OF A SPECIFIED FEE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-114, Idaho Code, be, and the same is hereby
amended to read as follows:

39-114. OPEN BURNING OF CROP RESIDUE. (1) The open burning of crop
residue to develop physiological conditions conducive to increase crop
yields, or to control diseases, insects, pests or weed infestations shall
be an allowable form of open burning, such that it is expressly authorized
as referenced in section 52-108, Idaho Code, so long as the open burning is
conducted in accordance with the provisions of this section and the rules
promulgated pursuant to this chapter.

(2) Crop residue means any vegetative material remaining in the field
after harvest or vegetative material produced on designated conservation
reserve program (CRP) lands.

(3) The open burning of crop residue shall be conducted in the field
where it was generated. A burn may not take place without preapproval from
the department. The department shall not approve a burn if it determines
that ambient air quality levels:

(a) Are exceeding, or are expected to exceed, seventy-five percent
(75%) of the level of any national ambient air quality standard on any
day, and these levels are projected to continue or recur over at least
the next twenty-four (24) hours; or

(b) Have reached, or are forecasted to reach and persist at, eighty per-
cent (80%) of the one (1) hour action criteria for particulate matter
pursuant to section 556 of IDAPA 58.01.01, rules for the control of air
pollution in Idaho.

The department shall make available to the public, prior to the burn, infor-
mation regarding the date of the burn, location, acreage and crop type to be
burned. If the agricultural community desires to burn more than twenty thou-
sand (20,000) acres annually of bluegrass within the state, that does not in-
clude Indian or tribal lands within the reservation boundaries as recognized
by the federal clean air act, then, prior to approving the burning of the ad-
ditional acres, the department shall complete an air quality review analysis
to determine that the ambient air quality levels in this section will be met.

(4) A fee in an amount of two dollars (\$2.00) per acre to be burned shall
be paid to the department prior to burning. This fee shall not apply to
propane flaming, as defined in the rules promulgated pursuant to this chap-
ter. The department shall remit all fees quarterly to the state treasurer,
who shall deposit the moneys in the general fund.

STATEMENT OF PURPOSE

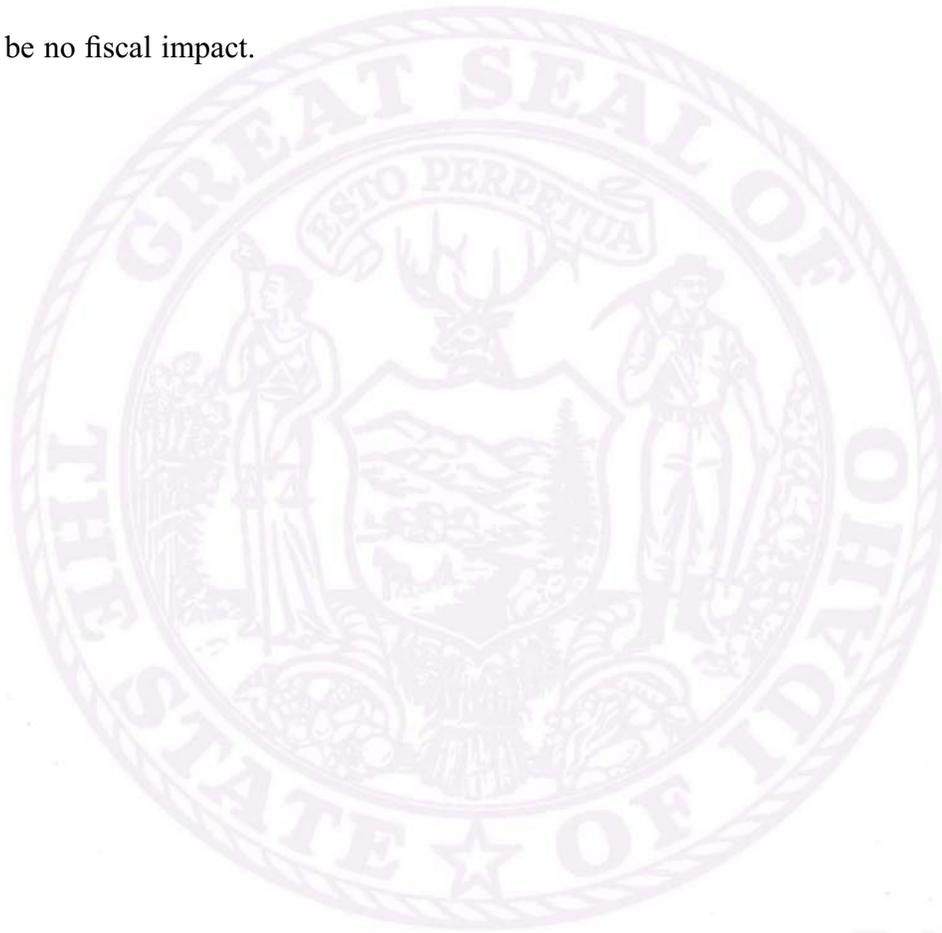
RS19927

Through the negotiated rulemaking process, a streamlined process for propane flaming of fields was developed such that it was determined the payment of a fee unnecessary.

This legislation makes changes to Idaho Code to expressly state that Crop Residue Burning (CRB) fees shall not apply to this activity.

FISCAL NOTE

There will be no fiscal impact.



Contact:

Name: Toni Hardesty
Office: Department of Environmental Quality
Phone: (208) 373-0240

Appendix B: Rule Docket Number 58-0101-1001

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1001

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality, Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Sections 39-105, 39-107, and 39-114, Idaho Code.

METHOD OF PARTICIPATION: Those interested in participating in the negotiated rulemaking process are encouraged to attend the following meeting. For those who cannot participate by attending the meeting, information for submitting written comments is provided at the end of this notice.

MEETING SCHEDULE: The negotiated rulemaking meeting will be held as follows. Additional meetings may be scheduled if necessary. For information regarding participation by telephone or scheduling of additional meetings, contact the undersigned. Requests to participate by telephone must be made by June 28, 2010.

Wednesday, June 30, 2010 - 9:30 a.m. to 12:30 p.m. MDT

**DEPARTMENT OF ENVIRONMENTAL QUALITY
Conference Room A
1410 N. Hilton, Boise, Idaho**

PRELIMINARY DRAFT: By June 2, 2010, a preliminary draft of the rule can be obtained at http://www.deq.idaho.gov/rules/air/58_0101_1001_negotiated.cfm or by contacting Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

DESCRIPTIVE SUMMARY: The new crop residue burning rules have been in effect since 2008. Upon completion of the second year of burning under the new rules, it became apparent that some smaller crop residue burns could and should be regulated under the rules differently than those large scale high fuel content burns. This rulemaking docket will address small fuel burns including, but not limited to, mint blanching, spot burns, burns of 5 acres or less, broken bales, and 5 to 10 acre pasture burns. Burn approval criteria and general provisions may also be revised.

The text of the rule will be drafted by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. Farmers desiring to burn crop residue, members of the regulated community who may be subject to Idaho's air quality rules as well as special interest groups, Idaho State Department of Agriculture, tribes, public officials, and members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in participating in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440, martin.bauer@deq.idaho.gov.

For those who cannot participate by attending the scheduled meeting, written comments may be submitted by mail, fax or e-mail at the address below. Written comments on the preliminary draft rule must be received by July 7, 2010. For information regarding submission of written comments on subsequent drafts of the negotiated rule, to receive copies of submitted written comments, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 30th day of April, 2010.

Paula J. Wilson, Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

<p>Docket Number: <u>58-0101-1001</u> Effective Date: <u>7/1/11 – temporary rule</u> Rules Title: <u>Rules for the Control of Air Pollution in Idaho</u> Agency Contact and Phone: <u>Mary Anderson, 373-0202</u></p>	<p style="text-align: right;">Public Notice</p> <p>Hearings: N/A <input type="checkbox"/> Yes <input type="checkbox"/> No Locations and Dates: N/A Written Comment Deadline: N/A</p>
<p>Descriptive Summary of Rule:</p> <p>The new crop residue burning rules have been in effect since 2008. Upon completion of the second year of burning under the new rules, it became apparent that some smaller crop residue burns could and should be regulated under the rules differently than those large scale high fuel content burns. This rule sets out provisions for obtaining spot burn, baled agricultural residue burn, and propane flaming permits.</p> <p>DEQ recommends that the Board adopt the rule, as presented under Docket No. 58-0101-1001, as a temporary rule with an effective date of July 1, 2011.</p>	<p>Negotiated Rule Making: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Sign-in sheets attached</p>
	<p>Costs To the Agency: This rule should reduce costs to the agency as it is anticipated that smaller burns would not be subject to the full process under the current crop residue burning rules. Costs To the Regulated Community: This rule should reduce costs to the regulated community.</p>
	<p>Relevant Statutes: Sections 39-105 and 39-107, Idaho Code, and House Bill 40 (to be codified at Section 39-114, Idaho Code)</p>
	<p>Idaho Code § 39-107D Statement: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.</p> <p>Temporary Rule Justification: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rules confers a benefit. Adoption of a temporary rule enables farmers with small crop residue burns to burn within a streamlined process under certain conditions. Adoption of Section 624 does not in itself authorize the open burning of crop residue in Idaho. Before burning under Section 624 can be conducted, several actions must take place, including development of a revised State Implementation Plan (SIP) and approval of the SIP by the U.S. Environmental Protection Agency (EPA). Prior to EPA SIP approval, those desiring to conduct spot burns, baled agricultural residue burns, or propane flaming must obtain a permit by rule in accordance with Sections 618 through 623. Contact DEQ before burning.</p> <p>Fiscal Impact Statement: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.</p>

Temporary Rule	<input type="checkbox"/> Necessary to protect public health, safety or welfare <input type="checkbox"/> Compliance with deadlines in amendments to governing law or federal programs <input checked="" type="checkbox"/> Conferring a benefit
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Docket Number: <u>58-0101-1001</u>		
Section	Section Title	Summary of Rule Changes Based on Public Comment
617	Crop Residue Disposal.	N/A
618	Permit by Rule.	N/A
619	Registration for Permit by Rule.	N/A
620	Registration Fee.	N/A
621	Burn Determination.	N/A
622	General Provisions.	N/A
623	Public Notification.	N/A
624	Spot Burn, Baled Agricultural Residue Burn, and Propane Flaming Permits.	N/A

MEETING SIGN-IN SHEET

Meeting Title: NEGOTIATED RULEMAKING

Rules for the Control of Air Pollution in Idaho, Docket No. 58-0101-1001

Meeting Date and Location: 6/30/10 – Boise, Idaho

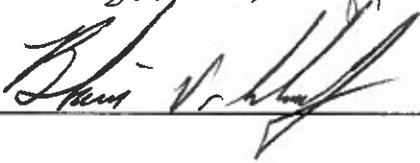
Phone participation: 373-0101/bridge 1

Name	Affiliation	E-Mail Address
Phone participation: Andrea Boyer Julie Simpson Kevin Greenleaf Lester Higgins Michael McGown Donna Deneen Mark Boyle Clayton Steele	Nez Perce Tribe Nez Perce Tribe Kootenai Tribe Coeur d'Alene Tribe EPA EPA DEQ DEQ	
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6/30/10 Boise

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Lynn Carlson	Deputy Atty General	on file
Martin Bauer	AIR ADMINISTRATOR	on file

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Robert Wilkosz	DEQ Air Quality	on file
Rick Hardy	DEQ Technical Services Division	on file
Mary Anderson	DEQ Air Quality	on file
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MEETING SIGN-IN SHEET

Meeting Title: NEGOTIATED RULEMAKING

Rules for the Control of Air Pollution in Idaho, Docket No. 58-0101-1001

Meeting Date and Location: 8/10/10 – Boise, Idaho

Phone participation: 373-0101/bridge 2

Name	Affiliation	E-Mail Address
Phone participation: Andrea Boyer Julie Simpson Kevin Greenleaf Michael McGown Mark Boyle Joe Anderson	Nez Perce Tribe Nez Perce Tribe Kootenai Tribe EPA DEQ IGPA	
Paula Wilson	AG/DEQ	
Mary Anderson	DEQ	
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8/10/10 - Boise

Name	Affiliation	E-Mail Address
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Martin Bauer	DEQ	"
Kerleen Meyer	Rothrum Prairie	
Jim Peters	Hatter Creek Ranch / Seeds Inc	jimp@seedsinc.com
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8/10/10 Boise

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Courtney Washburn	Idaho Conservation League	CWashburn@idahoconservation.org
David Luft - DEQ		
Steve Bacon - DEQ		
Carl Brown - DEQ		

MEETING SIGN-IN SHEET

Meeting Title: NEGOTIATED RULEMAKING

Rules for the Control of Air Pollution in Idaho, Docket No. 58-0101-1001

Meeting Date and Location: 9/23/10 – Boise, Idaho

Phone participation: 373-0101/bridge 1

Name	Affiliation	E-Mail Address
Phone participation: Andrea Boyer Julie Simpson Kevin Greenleaf Mark Boyle Clayton Steele Joe Anderson	Nez Perce Tribe Nez Perce Tribe Kootenai Tribe DEQ DEQ IGPA	
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9/23/10 Boise

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9/23/10 Boise

Name	Affiliation	E-Mail Address
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STEVE BALDWIN	DEQ, STATE OFFICE	
Carl Brown	DEQ, state office	
DAVID LYFT	DEQ-BRO	
R. Wilkosz	DEQ SO	
Ford Ekow	SAC	



State of Idaho
 DEPARTMENT OF ENVIRONMENTAL QUALITY
 Board of Environmental Quality

1410 North Hilton, Boise, ID 83706-1255, (208) 373-0502

C. L. "Butch" Otter, Governor
 Toni Hardesty, Director

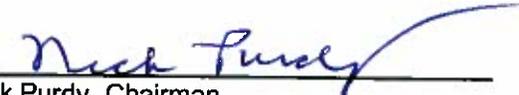
**DECLARATION OF RULEMAKING
 BY THE BOARD OF ENVIRONMENTAL QUALITY
 ADOPTION OF TEMPORARY RULE
 DOCKET NO. 58-0101-1001**

Pursuant to the authority granted to the Board of Environmental Quality in Title 39, Chapter 1, Idaho Code, and under the provisions for temporary rule adoption contained in Section 67-5226, Idaho Code, I declare that the following rule sections contained in IDAPA 58.01.01, the Rules for the Control of Air Pollution in Idaho, are hereby adopted as temporary rules.

IDAPA 58.01.01

Section 617	ADOPT AS PRESENTED
Section 618	ADOPT AS PRESENTED
Section 620	ADOPT AS PRESENTED
Section 622	ADOPT AS PRESENTED
Section 623	ADOPT AS PRESENTED
Section 624	ADOPT AS PRESENTED

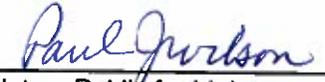
I hereby certify that this action has been taken in compliance with Title 67, Chapter 52, Idaho Code.


 Nick Purdy, Chairman

STATE OF IDAHO)
)
 County of Ada) ss.

On this 25th day of April, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Nick Purdy, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year in this certificate first above written.


 Notary Public for Idaho
 Residing at: Boise ID
 Expires: 9/23/11

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective July 1, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality is commencing proposed rulemaking. This action is authorized by Sections 39-105 and 39-107, Idaho Code, and House Bill 40 (to be codified at Section 39-114, Idaho Code).

PUBLIC HEARING SCHEDULE: A public hearing concerning this proposed rule will be held as follows:

July 7, 2011, 3:30 p.m.

**Department of Environmental Quality
Conference Room B
1410 N. Hilton, Boise, Idaho**

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

DESCRIPTIVE SUMMARY: The new crop residue burning rules have been in effect since 2008. Upon completion of the second year of burning under the new rules, it became apparent that some smaller crop residue burns could and should be regulated under the rules differently than those large scale high fuel content burns. This temporary/proposed rule sets out provisions for obtaining spot burn, baled agricultural residue burn, and propane flaming permits.

Farmers desiring to burn crop residue, members of the regulated community who may be subject to Idaho's air quality rules as well as special interest groups, Idaho State Department of Agriculture, tribes, public officials, and members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2011 for adoption of a pending rule. The pending rule is expected to become final and effective upon adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

DEQ will submit the final rule to the United States Environmental Protection Agency to be included in the State Implementation Plan as required by Section 110 of the Clean Air Act.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule confers a benefit. Adoption of a temporary rule enables farmers with small crop residue burns to burn within a streamlined process under certain conditions.

Adoption of Section 624 does not in itself authorize the open burning of crop residue in Idaho. Before burning under Section 624 can be conducted, several actions must take place, including development of a revised State Implementation Plan (SIP) and approval of the SIP by the U.S. Environmental Protection Agency (EPA). Prior to EPA SIP approval, those desiring to conduct spot burns, baled agricultural residue burns, or propane flaming must obtain a permit by rule in accordance with Sections 618 through 623. Contact DEQ before burning.

IDAHO CODE SECTION 39-107D STATEMENT: This rule does not regulate an activity not regulated by the

federal government, nor is it broader in scope or more stringent than federal regulations.

NEGOTIATED RULEMAKING: The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. On June 2, 2010, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 10-6, page 64, and a preliminary draft rule was made available for public review. Meetings were held on June 30, August 10, and September 23, 2010. Several members of the public participated in this negotiated rulemaking process by attending the meetings and by submitting written comments. A record of the negotiated rule drafts, written public comments received, and documents distributed during the negotiated rulemaking process is available at http://www.deq.idaho.gov/rules/air/58_0101_1001_temporary_proposed.cfm.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact Mary Anderson at (208)373-0202, mary.anderson@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before July 7, 2011.

DATED this 26th day of April, 2011.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton/Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE AND THE
PROPOSED RULE TEXT FOR DOCKET NO. 58-0101-1001**

617. CROP RESIDUE DISPOSAL.

The open burning of crop residue on fields where the crops were grown is an allowable form of open burning if conducted in accordance with Section 39-114, Idaho Code, and Sections 618 through 623~~4~~ of these rules.

~~(5-8-09)~~(7-1-11)T

618. PERMIT BY RULE.

01. General Requirements. All persons shall be deemed to have a permit by rule if they comply with all the provisions of Sections 618 through 623~~4~~. No person shall conduct an open burn of crop residue without obtaining the applicable permit by rule. Those persons applying for a spot burn, baled agricultural residue burn, or propane flaming permit shall comply with the provisions in Section 624. The permit by rule does not relieve the

applicant from obtaining all other required permits and approvals required by other state and local fire agencies or permitting authorities. ~~(5-8-09)~~(7-1-11)T

02. Forms. The Department shall provide the appropriate forms to complete the permit by rule. Forms may be available at the Department offices or on the Department website. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

620. REGISTRATION FEE.

01. Payment of Fee. The permit by rule registration fee set out in Section 39-114, Idaho Code, shall be paid in its entirety at least seven (7) days prior to the proposed burn date. See also Subsection 624.02.a. for registration and fee requirements for burning under a spot and baled agricultural residue burn permit. The permit by rule registration form and fee should be sent to:

Crop Residue Burning Registration Fees
Fiscal Office
Idaho Department of Environmental Quality
1410 N. Hilton, Boise, ID 83706-1255

~~(5-8-09)~~(7-1-11)T

02. Effect of Payment. Payment of the registration fee does not imply authorization or approval to burn. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

622. GENERAL PROVISIONS.

01. Burn Provisions. All persons in Idaho intending to dispose of crop residue through burning shall abide by the following provisions: (5-8-09)

a. Burning Prohibitions. Burning of crop residue shall not be conducted on weekends, federal or state holidays, or after sunset or before sunrise; (5-8-09)

b. Designated Burn Day. Burning of crop residue shall not be conducted unless the Department has designated that day a burn day and the permittee has received individual approval specifying the conditions under which the burn may be conducted; (5-8-09)

c. Portable Form of Communication. The person conducting the burning must have on their possession a portable form of communication such as a cellular phone or radio of compatible frequency with the Department in order to receive burn approval information or information that might require measures to withhold additional material such that the fire burns down; (5-8-09)

d. Location of Field Burning. Open burning of crop residue shall be conducted in the field where it was generated; (5-8-09)

e. Limitations on Burning. When required by the conditions of the notice of approval to burn, the permittee burning in proximity to institutions with sensitive populations shall immediately extinguish the fire or withhold additional material such that the fire burns down, unless the Department determines that the burn will not have an adverse impact on such institutions; (5-8-09)

f. Training Session. All persons intending to burn crop residue shall attend a crop residue burning training session provided by the Idaho Department of Environmental Quality or the Idaho State Department of

Agriculture and shall attend a crop residue disposal refresher training session every five (5) years; (5-8-09)

g. Air Stagnation or Degraded Air Quality. All field burning shall be prohibited when the Department issues an air quality forecast and caution, alert, warning or emergency as identified in Section 552 of these rules; (5-8-09)

h. Allowable Forms of Open Burning. The use of reburn machines, propane flammers, or other portable devices to ignite or reignite a field for the purposes of crop residue burning shall be considered an allowable form of open burning. Tires and other restricted material described in Subsection 603.01, of this rule, are not allowed for ignition of fields; (5-8-09)

i. Additional Burn Permits. All persons intending to burn crop residue shall obtain any additional applicable permits from federal, state or local fire control authorities prior to receiving approval from the Department to burn crop residue; and (5-8-09)

j. Reporting to the Department. All persons burning crop residue shall report to the Department the date burning was conducted, the actual number and location of acres burned, and other information as required by the Department. The Department may restrict further burning by a permittee until completed burns are reported. (5-8-09)

k. Specific Conditions. The open burning of crop residue shall be conducted in accordance with the specific conditions in the permittee's permit by rule. (7-1-11)T

02. Annual Report. The Department shall develop an annual report that shall include, at a minimum, an analysis of the causes of each exceedance of a limitation in Section 621 of this rule, if any, and an assessment of the circumstances associated with any reported endangerment to human health associated with a burn. The report shall include any proposed revisions to these rules or the Crop Residue Operating Guide deemed necessary to prevent future exceedances. (5-8-09)

03. Advisory Committee. The Department will assemble an advisory committee consisting of representatives from environmental organizations, farming organizations, health organizations, tribal organizations, the Idaho State Department of Agriculture, the Idaho Department of Environmental Quality, and others to discuss open burning of crop residue issues. (5-8-09)

623. PUBLIC NOTIFICATION.

01. Designation of Burn Days. The Director or his designee shall designate for a given county or airshed within a county burn or no-burn days. (5-8-09)

02. Posting on Website. The Department shall post daily on its website (www.deq.idaho.gov): ~~(5-8-09)~~(7-1-11)T

a. Whether a given day is a burn or no-burn day; (5-8-09)

b. The location and number of acres permitted to be burned; (5-8-09)

c. Meteorological conditions and any real time ambient air quality monitoring data; and (5-8-09)

d. A toll-free number to receive requests for information (1-800-345-1007). ~~(5-8-09)~~(7-1-11)T

03. E-Mail Update Service. The Department shall provide an opportunity for interested persons to sign up to receive automatic e-mail updates for information regarding the open burning of crop residue. (5-8-09)

624. ~~(RESERVED)~~ SPOT BURN, BALED AGRICULTURAL RESIDUE BURN, AND PROPANE FLAMING PERMITS.

Note: Adoption of Section 624 does not in itself authorize the open burning of crop residue in Idaho. Before

burning under Section 624 can be conducted, several actions must take place, including development of a revised State Implementation Plan (SIP) and approval of the SIP by the U.S. Environmental Protection Agency (EPA). Prior to EPA SIP approval, those desiring to conduct spot burns, baled agricultural residue burns, or propane flaming must obtain a permit by rule in accordance with Sections 618 through 623. Contact DEQ before burning. (7-1-11)T

01. Applicability. (7-1-11)T

a. Spot Burn. A spot burn includes no more than one (1) acre of evenly distributed crop residue or two (2) tons of piled crop residue. The open burning of weed patches, spots of heavy residue, equipment plugs and dumps, pivot corners of fields, and pastures may constitute a spot burn. Spot burn does not include the open burning of wind rows. (7-1-11)T

b. Baled Agricultural Residue Burn. An open burn used to dispose of broken, mildewed, diseased, or otherwise pest-ridden bales still in the field where they were generated. (7-1-11)T

c. Propane Flaming. The use of flame-generating equipment to briefly apply flame and/or heat to the topsoil of a cultivated field of pre-emerged or plowed-under crop residue with less than five hundred fifty (550) pounds of burnable, non-green residue per acre in order to control diseases, insects, pests, and weed emergence. (7-1-11)T

02. Spot and Baled Agricultural Residue Burn Permit. (7-1-11)T

a. Registration and Fee Requirements. Any person applying for a spot and baled agricultural residue burn permit under Section 624 shall provide the registration information listed in Subsections 619.01 and 619.02 and pay a nonrefundable fee of twenty dollars (\$20) to the Department (see Section 620) at least fourteen (14) days prior to the date the applicant proposes to conduct the first burn of the calendar year. (7-1-11)T

b. Term and Acreage. A spot and baled agricultural residue burn permit is valid for the calendar year in which it is issued and is good for a cumulative total of no more than ten (10) acres of spots and/or equivalent piled or baled agricultural residue during the year and no more than one (1) acre of spots and/or equivalent piled or baled agricultural residue per day. Two (2) tons of piled or baled agricultural residue is assumed to be equivalent to one (1) acre. (7-1-11)T

03. Propane Flaming Permit. Persons conducting propane flaming as defined under Subsection 624.01.c. shall be deemed to have a permit by rule if they comply with the applicable provisions in Subsections 624.04 and 624.05. (7-1-11)T

04. General Provisions. All persons intending to burn under Section 624 shall comply with the provisions of Subsections 622.01.c., 622.01.d., 622.01.f., through 622.01.i., and 622.01.k. in addition to the following: (7-1-11)T

a. The permittee is responsible to ensure that adequate measures are taken so the burn does not create a hazard for travel on a public roadway. (7-1-11)T

b. Burning is not allowed if the proposed burn location is within three (3) miles of an institution with a sensitive population and the surface wind speed is greater than twelve (12) miles per hour or if the smoke is adversely impacting or is expected to adversely impact an institution with a sensitive population. (7-1-11)T

c. Designated Burn Day. Burning shall not be conducted unless the Department has designated that day a burn day, which for purposes of Section 624 may include weekends and holidays, and the permittee burns within the burn window provided on the Department's website at www.deq.idaho.gov. Spot and baled agriculture residue burns shall not smolder and create smoke outside of the designated time period burning is allowed. (7-1-11)T

05. Recordkeeping. Permittees shall record the date, time frame, type of burn, type of crop, and amount burned on the date of the burn. Records of such burns shall be retained for two (2) years and made available to the Department upon request. (7-1-11)T

