

RESOURCES & ENVIRONMENT COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2011 Legislative Session

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IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.02 - RULES GOVERNING PUBLIC SAFETY

DOCKET NO. 13-0102-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b) and 36-411, Idaho Code.

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

Implement Senate Bill 1283 which allows hunter education certification from other countries.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [September 1, 2010 Idaho Administrative Bulletin, Vol. 10-9, pages 27 and 28.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact W. Dallas Burkhalter (208) 334-3715.

DATED this 9th day of November, 2010.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **July 12, 2010**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-411, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2010.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Implement Senate Bill 1283 which allows hunter education certification from other countries.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The temporary rule confers a benefit to certain hunters, and complies with amendment to Section 36-411, Idaho Code.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with the statutory amendment.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 29th day of July, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0102-1001

100. HUNTER EDUCATION.

01. Mandatory Hunter Education Program. All students being certified under this program must have successfully completed at least ten (10) hours of instruction in firearms safety, wildlife management, wildlife law, hunter ethics, first aid/survival, plus practical experience in the handling and shooting of firearms. This instruction may be completed through classroom study, home study, an on-line computer course, or other approved methods. The Department of Fish and Game shall manage the Hunter Education Program pursuant to the Idaho Hunter Education Policy and Procedure Manual. Only certificates for courses which meet or exceed the standards of the Idaho course are acceptable from other states or countries. (4-6-05)()

02. Fees. A fee as established by Section 36-412(c), Idaho Code, shall be charged each student enrolling in the Hunter Education Program. (3-20-04)

03. Parent to Attend Live Fire Exercise with Student. For students under the age of twelve (12), a parent, legal guardian or other adult designated by the parent or legal guardian shall attend the Hunter Education Live Fire Exercise with the student. Preferably, the adult attending the live fire exercise should be the same adult who will accompany the student into the field while hunting. This requirement is mandatory for successful completion of the Hunter Education Course. (3-20-04)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b), 36-301, and 36-1101, Idaho Code.

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

Implement rule changes to the Landowner Appreciation Program (LAP) recommended by the Fish and Game Advisory Committee and the Idaho Sportsmen Caucus Advisory Council. Redefine eligibility requirements for the LAP, and restrict commercialization of LAP tags.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [September 1, 2010 Idaho Administrative Bulletin, Vol. 10-9, pages 29 through 33.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact W. Dallas Burkhalter (208) 334-3715.

DATED this 9th day of November, 2010.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b), 36-301, and 36-1101, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2010. The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

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

Implement rule changes to the Landowner Appreciation Program (LAP) recommended by the Fish and Game Advisory Committee and the Idaho Sportsmen Caucus Advisory Council. Redefine eligibility requirements for the LAP, and restrict commercialization of LAP tags.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the input and recommendation of the Fish and Game Advisory Committee and the Idaho Sportsmen Caucus Advisory Council.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 29th day of July, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-1001

010. DEFINITIONS.

These definitions will provide clarity and consistency in enforcement of these rules. (7-1-93)

01. Authorized Corporate Representative. Any shareholder in a corporation, designated in writing by the corporation as the eligible applicant, who is in actual physical control of the eligible property. (7-1-93)

02. Blind Person. A blind person is one who has a medically documented loss or impairment of his or her vision and includes any person whose visual acuity with correcting lens does not exceed twenty/two hundred (20/200) in the better eye, or whose vision in the better eye is restricted to a field which subtends an angle of not greater than twenty (20) degrees. (7-1-93)

03. Domicile. The term “domicile” means the place where an individual has his true, fixed, permanent home and to which place he has the intention of returning whenever he is absent. An individual can have several dwelling places, but only one (1) domicile. Factors to consider to establish domicile include, but are not limited to: (7-1-93)

a. What address does the person use on tax returns and where does the person file a state resident income tax return? (7-1-93)

b. Where is the person registered to vote? (7-1-93)

c. Where does the person and his immediate family live? (7-1-93)

d. Where does the person have his mail sent or forwarded to? (7-1-93)

e. Does the person remain listed in the telephone directory? (7-1-93)

f. Where does he register his automobiles? (7-1-93)

g. Where has the person claimed a homeowner exemption on a personal residence? (7-1-93)

h. Where does he have a driver’s license? (7-1-93)

i. Where are his regular physicians and dentists located? (7-1-93)

04. Disabled. A person is disabled if they are deemed disabled by one (1) or more, but not necessarily all of the following: the railroad retirement board pursuant to Title 45 of the United States Code, or certified as eligible for Federal Supplemental Security Income (SSI); or Social Security Disability Income (SSDI); or a nonservice-connected veterans pension; or a service-connected veterans disability benefit with forty percent (40%) or more disability; or if a

physician has certified any of the following - that a person has lost the use of one (1) or both lower extremities or both hands, or is unable to walk two hundred (200) feet or more unassisted by another person, or is unable to walk two hundred (200) feet or more without the aid of a walker, cane, crutches, braces, prosthetic device or a wheelchair, or is unable to walk two hundred (200) feet or more without great difficulty or discomfort due to the following impairments - neurological, orthopedic, respiratory, cardiac, arthritic disorder, blindness, or the loss of function or absence of a limb. (3-8-07)

05. Eligible Applicant. A physically disabled person certified by a physician licensed in the state in which the disabled person resides, as meeting one (1) or more of the criteria set forth in Section 36-1101(b), Idaho Code. (5-8-09)

06. Eligible Property. At least ~~six hundred forty (640)~~ **three hundred twenty (320)** acres of land in one (1) controlled hunt unit determined by the Department to be valuable for habitat or propagation purposes for deer, elk, and/or ~~antelope~~ **pronghorn**, whether owned by one (1) or more persons, a partnership, or corporation. It shall not include any government lands. (4-5-00)()

07. Landowner. Any person or corporation whose name appears on a deed as the owner of eligible property or whose name appears on a contract for sale of eligible property as the purchaser, and any affiliates, management companies, associated entities, wholly-owned subsidiaries, corporations, or limited liability corporations wherein fifty percent (50%) or more of the ownership or controlling interest is maintained by a single individual, partnership or corporation. (10-26-94)()

08. Permanent Disability. Permanent disability is defined as a medically determinable physical impairment, which a physician has certified that the condition has no expectation for a fundamental or marked change at any time in the future. (3-8-07)

09. Resident. The term “resident” is defined in Section 36-202(s), Idaho Code. (5-8-09)

10. Physician. A person licensed to practice medicine pursuant to the Idaho Medical Practice Act (Sections 54-1801 through 54-1820, Idaho Code), or equivalent state licensing authority if the person is not licensed to practice in Idaho. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

400. LANDOWNER APPRECIATION ~~PERMITS~~ **PROGRAM.**

01. Eligible Applicants. Eligible applicants must be registered with the Department and are limited to landowners. Landowners not complying with prohibitions listed in Subsection 400.08, of these rules, shall not be eligible to participate in the landowner appreciation program for three (3) years. (4-5-00)()

02. Hunt Units. Landowner Appreciation ~~Permits~~ **Program controlled hunt tags** shall

be issued only for those controlled hunt units designated by the Director as eligible for such permits. (3-30-01)()

~~03. Reasonable Access. In 2001, landowners, authorized corporate, or partnership representatives are not required to provide access or retain written records as a condition to qualifying for Landowner Appreciation Permits. (3-15-02)~~

043. Qualifying Property. Only property that is used by and provides significant habitat values for deer, elk or ~~antelope~~ pronghorn qualifies for the Landowner Appreciation Permit controlled hunt tag program. Landowners ~~will~~ may receive Landowner Appreciation Permits controlled hunt tags only for the species and sex that use the property. (4-5-00)()

054. Applications for Landowner Appreciation ~~Permits~~ Controlled Hunt Tags. Applications for landowner appreciation ~~permits~~ controlled hunt tag(s) shall be on a form prescribed by the Department. Applicants must be registered with the Department and shall sign the application. (4-5-00)()

~~a. The application shall include the applicant's hunting or combination license number. (5-15-95)~~

ba. Applications from landowners with six hundred forty (640) acres or more will be accepted on or after June 15 of each year. Applications received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than July 15 of each year will be entered in the random drawing for permits tags. Each application will be entered in the random drawing one (1) time based upon each six hundred and forty (640) acres of eligible property registered by the landowner that are within the hunt area. For example, if a landowner has six thousand four hundred (6,400) eligible acres, the application will be entered into the random drawing ten (10) times. ~~Applications for left-over permits will be accepted on or after August 15 of each year on a first-come-first-served basis. Only written applications will be accepted and must be accompanied by a six dollar and fifty cent (\$6.50) application fee. (5-3-03)()~~

eb. ~~Only o~~One (1) application may be submitted ~~for~~ by a landowner with eligible property consisting of six hundred forty (640) acres to four thousand nine hundred ninety-nine (4,999) acres. ~~Up to two (2)~~ A second applications may be submitted for eligible property consisting of five thousand (5,000) acres or more. (5-3-03)()

05. Left Over Tags. Landowners with three hundred twenty (320) acres or more may apply for left-over tags following the random draw. Written applications will be accepted after August 15 of each year on a first-come, first-served basis. Applications must be accompanied by the appropriate application fee as specified in Section 36-416, Idaho Code. ()

06. Property and Applicant Registration. (5-15-95)

a. Prior to any eligible applicant applying for a Landowner Appreciation Permit Program controlled hunt, the qualifying property and eligible applicant must be registered with the Department. Registering landowners must notify the Department of any changes in property or applicant eligibility. (4-5-00)()

b. Registration of property and eligible applicant must be on a form prescribed by the Department. The landowner must submit the registration form and a copy of the deed(s), and the most recent tax assessment(s), describing the eligible property showing the name(s) of the owner(s), and a map of eligible property to the Department regional office. Department personnel will certify the registration and land description and return a copy to the landowner. (4-5-00)

c. If the person registering is an authorized corporate or partnership representative, he shall submit with his registration written verification from the board of directors, partnership, or an officer of the corporation, other than himself, verifying that he is authorized to register the property and eligible applicants. (4-5-00)

07. Issuance of ~~Permits~~ Controlled Hunt Tag(s). (~~7-1-93~~)()

a. ~~Effective in 1999, o~~Once the Department has determined the number of controlled hunt ~~permits tags~~ to be issued in any controlled hunt unit, an additional ten percent (10%) of the number of controlled hunt ~~permits tags~~ MAY be issued as Landowner Appreciation ~~Permits Program tags~~. In subsequent years up to twenty-five percent (25%) of the number of controlled hunt ~~permits tags~~ MAY be issued only if the hunt is over subscribed by eligible Landowner Appreciation ~~Permit Program~~ applicants. (~~4-5-00~~)()

b. Where the number of landowner appreciation applicants exceeds the number of landowner appreciation ~~permits controlled hunt tags~~ available in a unit, successful applicants will be determined by drawing. All eligible landowners in the drawing will be considered for one (1) tag before any landowner is eligible for a second tag. (~~4-5-00~~)()

c. No more than two (2) Landowner Appreciation ~~Permits Program controlled hunt tags~~ may be issued to any eligible landowner. (~~4-5-00~~)()

d. Only one (1) leftover Landowner Appreciation Program controlled hunt tag may be issued for eligible property consisting of between three hundred twenty (320) and six hundred thirty nine (639) acres within the hunt area designated by the Director with Landowner Appreciation Program controlled hunt tags. Only one (1) landowner appreciation ~~permit program controlled hunt tag~~ may be issued for eligible property consisting of between six hundred forty (640) and four thousand nine hundred ninety-nine (4,999) acres within the hunt area designated by the Director with Landowner Appreciation ~~Permits Program controlled hunt tags~~. ~~However, o~~One (1) additional ~~permit controlled hunt tag~~ may be issued to a landowner or designated agent(s) for eligible property in excess of five thousand (5,000) acres within the hunt area designated by the Director with Landowner Appreciation ~~Permits Program controlled hunt tags~~. No landowner or designated agent(s) is eligible to receive more than one (1) ~~permit controlled hunt tag~~ for one (1) species in a calendar year. (~~3-15-02~~)()

e. A successful landowner, corporate or partnership representative drawing a landowner appreciation ~~permit program controlled hunt tag~~ may, ~~without additional fees,~~ designate to whom the ~~permit controlled hunt tag~~ will be issued pursuant to Subsection 400.08 of this rule. (~~4-5-00~~)()

08. Prohibitions. Landowner Appreciation Program controlled hunt tags shall not be sold or marketed. ()

089. Application of Controlled Hunt Restrictions. (7-1-93)

a. The restriction that applying for a moose, bighorn sheep, or mountain goat controlled hunt makes the applicant ineligible to apply for any other controlled hunt shall not apply to persons who are otherwise eligible to apply for a landowner ~~preference permit~~ appreciation program controlled hunt tag. (7-1-93)()

b. Landowner appreciation ~~permits~~ program controlled hunt tags issued to non-residents shall not be considered as part of the non-resident quota. (4-5-00)()

c. Landowner ~~preference permits~~ appreciation program controlled hunt tags are exempt from the one (1) year waiting periods applicable for certain deer, elk and ~~antelope~~ pronghorn permits. (3-30-01)()

0910. Special Restrictions. Any person hunting with a Landowner appreciation ~~permit~~ program controlled hunt tag shall hunt only within the boundaries described in the hunt area designated by the Director. Only valid, current-year controlled hunt deer, elk, or ~~antelope~~ pronghorn tags may be used in conjunction with a landowner appreciation ~~permit~~ program. No person shall kill more than one (1) deer, elk or ~~antelope~~ pronghorn during a calendar year EXCEPT: (3-30-01)()

a. ~~In designated controlled depredation hunts, one (1) additional deer, elk or antelope may be taken by persons holding permit/tags for those hunts; or Depredation Hunts. In depredation hunts, one (1) additional deer, elk or pronghorn may be taken by persons holding tags for those hunts; EXCEPT: those depredation hunters who were selected for depredation hunts prior to the controlled hunt season for the unit(s) in which they hold a controlled hunt tag must include any animal they harvest within the restrictions imposed by the controlled hunt tag.~~ Depredation Hunts. In depredation hunts, one (1) additional deer, elk or pronghorn may be taken by persons holding tags for those hunts; EXCEPT: those depredation hunters who were selected for depredation hunts prior to the controlled hunt season for the unit(s) in which they hold a controlled hunt tag must include any animal they harvest within the restrictions imposed by the controlled hunt tag. (7-1-93)()

b. ~~In extra tag hunts, one (1) additional deer, elk or antelope may be taken by persons holding tags for those hunts.~~ Extra Tag Hunts. In extra tag hunts, one (1) additional deer, elk or pronghorn may be taken by persons holding tags for those hunts. (7-1-98)()

c. ~~In no event shall any person take more than two (2) deer, elk or antelope during a calendar year or more than one (1) deer, elk or antelope per day.~~ Limits on Take - Deer, Elk, Pronghorn. In no event shall any person take more deer, elk or pronghorn in a calendar year than the number of tags the person legally possesses for each species. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

403. ANTELOPE PRONGHORN LANDOWNER APPRECIATION SEASONS.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-30-01)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-1002

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b) and 36-301, Idaho Code.

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

Update rules to reflect previous legislative action (SB 1141a – 2009) and Commission actions, including the elimination of controlled hunt permits, adjustments in elk zone tag quotas, and allowance for rain checks.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [September 1, 2010 Idaho Administrative Bulletin, Vol. 10-9, pages 34 through 40.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact W. Dallas Burkhalter (208) 334-3715.

DATED this 9th day of November, 2010.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **July 12, 2010**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-301, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2010.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Update rules to reflect previous legislative action (SB 1141a – 2009) and Commission actions, including the elimination of controlled hunt permits, adjustments in elk zone tag quotas, and allowance for rain checks.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The temporary rule confers a benefit to certain hunters, and complies with amendments to Sections 36-104, 36-409, 36-416, 36-1104, and 36-1104A, Idaho Code.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with the statutory amendment.

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

this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 29th day of July, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-1002

200. LICENSES, STAMPS, PERMITS AND TAGS.

01. Licenses. Authorized lifetime license certificate holders will be issued appropriate license(s) annually. Certificate holders must have such license(s) in possession while hunting or fishing. However, no hunting or combination license shall be issued to the holder of a lifetime license certificate ~~under the age of fifteen (15)~~ born after January 1, 1975 unless a certificate of competency in hunter education is presented in accordance with Section 36-411, Idaho Code. (7-1-93)()

02. Stamps, Permits, and Tags. The certificate holder has the responsibility to obtain stamp(s), permit(s), and/or tag(s) as required for hunting or fishing. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

250. TAGS AND PERMITS ISSUED BY POINT-OF-SALE VALIDATION.

~~**01. Tags or Permits Properly Sealed.** No big game tag, salmon permit, steelhead permit, WMA pheasant permit or three-day salmon/steelhead fishing license is valid unless it has been properly sealed in the appropriate portion of the tag/permit pouch. (3-20-97)~~

~~**02.** Defaced, altered or tampered permits. Any license (as defined in Section 36-202(z), Idaho Code) which is defaced, altered, or tampered with shall be invalid from the date and time of issuance. It shall be a violation to use or attempt to use any license that has been defaced, tampered with, or altered. Evidence of defacing, tampering, or altering shall include but is not limited to: tears in the paper that would indicate that a person had attempted to lift up the clear acetate covering over a tag or permit which has been sealed in a tag/permit pouch or erasures or typeovers to the license stock. (3-20-97)()~~

(BREAK IN CONTINUITY OF SECTIONS)

261. AUTHORIZATION NUMBER.

01. Authorization Request. Upon request, the applicant may receive an authorization number assigned by the supplier as directed by the Department. (3-20-97)

02. Authorization Number Used in Lieu of License. The authorization number may be used in lieu of the actual license only by the individual for whom the license was purchased. When used in lieu of a license, the person must carry his driver's license, commercial permit, identification card, driver training permit, or instruction permit and, upon request of an authorized officer, present such identification for inspection. Failure to carry such identification or to present it for inspection is a violation. The authorization number may be used for not more than fourteen (14) calendar days from the date of issue, except authorization numbers for short-term licenses shall be valid only for the stated term from the beginning effective date of the license. This allows the authorization-number holder to hunt or fish during the time period it takes to mail the license to the individual. Thereafter, the individual must have in possession the appropriate signed license to hunt or fish. (3-20-97)

03. Violation. It is a violation to hunt and fish with an invalid authorization number or an authorization number issued to another person. (3-20-97)

04. Authorization Number Used Only for Activities That Do Not Require License, Tag, Permit or Stamp. The authorization number may be used only for those hunting or fishing activities that do not require a license, tag, or permit, ~~or stamp to be sealed in a tag/permit pouch in accordance with Subsection 250.01~~ to be notched or attached to a carcass. (3-20-97)()

(BREAK IN CONTINUITY OF SECTIONS)

505. DEER AND ELK TAG ALLOCATION.

01. Allocation of Tags. Pursuant to Idaho Code, Section 36-408, the Fish and Game Commission may allocate a number of deer and/or elk tags for use by hunters with signed agreements with licensed outfitters in zones with limited numbers of tags. The allocation will be calculated on a zone basis with reductions or increases in hunting opportunities to be proportionate among resident hunters, nonoutfitted nonresident hunters, and outfitted hunters. When the number of hunters in a general hunt unit or zone becomes restricted, the Department will calculate the initial number of allocated tags for each zone using the Idaho Outfitters and Guides Licensing Board's records of average historic use during the previous five (5) year period. Where it is biologically feasible, any reductions in the number of tags available within a zone

which exceeds twenty percent (20%) will be spread over a three (3) year period with a maximum reduction of fifty percent (50%) taken in the first year and twenty-five percent (25%) in the second year. When an area becomes controlled, hunt application and eligibility rules will apply to allocated tags in controlled hunts. Only those units or zones with licensed outfitted areas with historic use will be considered for tag allocation. (3-8-07)

02. Controlled Hunt Areas. Only those controlled hunt areas with historic licensed deer and/or elk outfitted area(s) may be considered for a tag/~~permit~~ allocation. The allocation will be calculated on a controlled hunt area basis with reductions or increases in hunting opportunities to be proportionate among resident hunters, non-outfitted nonresident hunters, and outfitted hunters. (~~3-8-07~~)()

a. The number of allocated tags will be in addition to ~~from~~ the number of tags authorized by the Commission within each controlled hunt area with historic licensed deer and/or elk outfitter areas. (~~3-8-07~~)()

b. Prior to submitting an application for an outfitter allocated controlled hunt, the applicant must have a written agreement with an outfitter licensed in the hunt area. Successful applicants of an outfitter allocated controlled hunt must hunt with an outfitter licensed for the hunt area. The outfitter must purchase the successful applicant's ~~permit and~~ **controlled hunt** tag by August 20. ~~Successful applicants authorize the Department to provide names and addresses to the outfitter(s) licensed for that controlled hunt.~~ (~~3-8-07~~)()

c. Successful applicants who do not want to participate in the outfitted hunt can decline the hunt upon written notification to the Department. Those declining the hunt will then be eligible to participate in a general season or leftover controlled hunt. Those drawing an outfitted controlled hunt and then declining the controlled hunt will be subject to the appropriate waiting period. (5-3-03)

d. Successful applicants that do not secure the services of an Idaho licensed outfitter and have not purchased the controlled hunt ~~permit and~~ tag by August 20 will forfeit the opportunity to purchase a controlled hunt ~~permit~~ tag. The forfeited controlled hunt ~~permit~~ tag will then be listed as a leftover ~~permit~~ **controlled hunt tag**. The Department will inform the Idaho Outfitters and Guides Board that a ~~permit~~ **leftover controlled hunt tag** is available. After securing a client, the outfitter(s) may then purchase the leftover controlled hunt ~~permit~~ tag at a Department regional or headquarters office. (~~5-3-03~~)()

e. The number of allocated tag(s)/~~permits~~ will be determined by using one (1) of the following options: (~~3-30-01~~)()

i. The number of allocated tags available within the controlled hunt area will be no less than one (1) tag and no more than three percent (3%); or ()

ii. The number of tags available within the controlled hunt area will be based on the average historic use during the previous five (5) year period and calculated tag numbers will be rounded up when ~~permits~~ **controlled hunt tags** equal or exceed zero point six (0.6) and rounded down when ~~permits~~ **controlled hunt tags** are less than zero point six (0.6); or (~~3-30-01~~)()

- iii. No tags will be allocated. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

601. ELK ZONE TAG QUOTAS.

<i>Zone</i>	<i>Units</i>	<i>Total Tags</i>	<i>General Resident Tags</i>	<i>General Nonresident Tags</i>	<i>Outfitter Allocation</i>
<i>Lolo B Tags</i>	<i>10,12</i>	<i>1600</i>	<i>1008</i>	<i>356</i>	<i>236</i>
<i>Selway A Tags</i>	<i>16A, 17, 19, 20</i>	<i>647</i>	<i>179</i>	<i>254</i>	<i>214</i>
<i>Selway B Tags</i>	<i>16A, 17, 19, 20</i>	<i>1067</i>	<i>480</i>	<i>284</i>	<i>303</i>
<i>Middle Fork A Tags</i>	<i>20A, 26, 27</i>	<i>1551</i>	<i>1168</i>	<i>174</i>	<i>209</i>
<i>Middle Fork B Tags</i>	<i>20A, 26, 27</i>	<i>1636</i>	<i>925</i>	<i>267</i>	<i>444</i>
<i>Elk City B Tags</i>	<i>14, 15, 16</i>	<i>1790</i>	<i>1414</i>	<i>326</i>	<i>50</i>
<i>Dworshak B Tags</i>	<i>10A</i>	<i>2380</i>	<i>2118</i>	<i>215</i>	<i>47</i>

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets elk zone tag quotas by proclamation following the procedures outlined in Subsection 505 of this rule. The proclamation is available at Department offices and license vendors. (3-29-10)()

602. SPECIAL MILITARY DEPLOYMENT REFUND AND RAIN CHECK.

01. Special Refund and Rain Check Rule. This special refund and rain check rule applies to the appropriate calendar year hunting season. Because of military deployment to areas of armed conflict, some hunters will be unable to hunt big game animals for which they purchased tags in the state of Idaho. (4-11-06)

02. Special Refund and Rain Check Eligibility. Hunters who have purchased tags and who can show in good faith they could not participate in hunting activities due to military deployment to areas of armed conflict will be eligible for a refund or rain check for license and tags for the next calendar year hunting season as outlined in this rule. (4-11-06)

03. General Season Tag. Holders of a general season tag for deer or elk may request: (3-20-04)

a. A refund of the hunting license and tag fee; (3-20-04)

b. A rain check for a hunting license and same tag for the next calendar year hunting season; or (4-11-06)

c. An exchange in the calendar year for a tag in another zone or area so long as tags are available in that area or zone. (4-11-06)

04. Controlled Hunt ~~Permit and~~ Tag. Holders of a controlled hunt ~~permit and~~ tag for deer, elk, or ~~antelope~~ **pronghorn** may request: ~~(3-20-04)~~()

a. A refund of the hunting license; ~~and~~ controlled hunt ~~permit, and~~ tag fee; ~~(3-20-04)~~()

b. A rain check for a hunting license; ~~and~~ controlled hunt ~~permit, and~~ tag for the same controlled hunt in the next calendar year hunting season; or ~~(4-11-06)~~()

c. An exchange in the calendar year for a hunting license and a general season tag in another zone or area so long as tags are available in that area or zone. (4-11-06)

05. Nonresident Bear or Mountain Lion Tags. Holders of nonresident bear or mountain lion tags may request: (3-20-04)

a. A refund of the hunting license and tag fee; or (3-20-04)

b. A rain check for a hunting license and tag for the next calendar year hunting season. (4-11-06)

06. Moose, Bighorn Sheep, or Mountain Goat Controlled Hunt ~~Permits~~ **Tags.** Holders of moose, bighorn sheep, or mountain goat controlled hunt ~~permits~~ **tags** may request: ~~(3-20-04)~~()

a. A refund of the hunting license; ~~and~~ controlled hunt ~~permit, and controlled hunting~~ tag fee; or ~~(3-20-04)~~()

b. A rain check for a hunting license; ~~controlled hunt permit,~~ and controlled hunt tag for the next calendar year hunting season. ~~(4-11-06)~~()

07. Ineligible to Request Tag ~~or Permit~~ Refund or Rain Check. If the person hunts a species of wildlife before requesting a refund or rain check, then the tag ~~or permit~~ fee for that species will not be refunded or eligible for a rain check for the next calendar year season. ~~(4-11-06)~~()

08. Ineligible to Request License Fee Refund or Rain Check. If the person hunts for any species during the applicable year hunting season before requesting a refund or rain check, then the hunting license fee will not be refunded or eligible for a rain check for the next calendar year season. (4-11-06)

09. Rain Check Requests Must be for Same Species. All rain check requests must be made for the same species. For example, a deer tag will not be eligible for a rain check of an elk tag in the next calendar year season. (4-11-06)

10. Refunds Will Be for the Amount Paid. All refunds will be for the amount the person paid for the hunting license or tag. (3-20-04)

11. Use of Department-Approved Form for Rain Check or Refund Request. Resident and nonresident military personnel who have purchased general season tags or controlled hunt tags and are unable to participate in any hunting activities due to military deployment must submit a request for a refund or rain check on the department-approved form (found on Idaho Fish and Game website <http://fishandgame.idaho.gov/>) by January 1, next calendar year, along with a copy of their deployment papers, or a letter from their commanding officers stating the dates the individual was deployed for duty in areas of armed conflict. Those requests received after this date will not be eligible for the special refund or rain check. (4-11-06)

603. -- 699. (RESERVED).

700. SPECIAL BIGHORN SHEEP ~~PERMIT~~/TAG.

01. Eligibility. In order to be eligible to bid on the special bighorn sheep tag, a person must be eligible to purchase an Idaho hunting or combination license. (3-20-04)

02. Validity of Tag. The Special Bighorn Sheep ~~Permit~~/Tag shall be valid in Unit 11 only during odd-numbered years and during even-numbered years when the Bighorn Sheep Lottery ~~Permit~~/Tag holder chooses not to hunt in Unit 11. ~~(3-20-04)~~()

03. License and ~~Permit~~ Controlled Hunt Tag. A hunting license and ~~permit~~ controlled hunt tag will be provided to the successful bidder from the net proceeds of the auction. ~~(7-1-93)~~()

04. Application of Big Game Rules. All rules governing the Taking of Big Game Animals, IDAPA 13.01.08, shall apply to the eligible and successful bidders other than as specified herein. (7-1-93)

a. No successful bidder shall be eligible to apply for a bighorn sheep controlled hunt ~~permit~~ tag the same year the bidder is issued a Special Bighorn Sheep ~~Permit~~/Tag. ~~(3-30-01)~~()

b. A person receiving a Special Bighorn Sheep ~~Permit~~/Tag, but who is unsuccessful in taking a bighorn sheep, shall be eligible to bid the following year for another Special Bighorn Sheep ~~Permit~~/Tag. ~~(3-15-02)~~()

c. A person successful in taking a bighorn sheep with a special bighorn sheep tag shall be eligible to bid the following year. (3-20-04)

701. -- 799. (RESERVED).

800. BIGHORN SHEEP LOTTERY ~~PERMIT~~/TAG.

01. Eligibility. (7-1-93)

a. In order to win and be issued the Bighorn Sheep Lottery ~~Permit~~/Tag, a person must be eligible to purchase an Idaho hunting or combination license ~~EXCEPT that the Lottery Permit/Tag shall be valid in Unit 11 only during even-numbered years and during odd-numbered years~~

~~when the Special Bighorn Sheep Permit/Tag holder chooses not to hunt in Unit 11.~~

~~(3-15-02)()~~

b. If any person wins the Bighorn Sheep Lottery ~~Permit/Tag~~ and has already been drawn for a bighorn sheep controlled hunt ~~permit tag~~ for the same year, the controlled hunt ~~permit tag~~ shall be returned to the Department and voided and the ~~permit/tag~~ fees refunded. The lottery tag will be valid to hunt bighorn sheep that year. (7-1-93)()

02. Validity of Tag. The Bighorn Sheep Lottery ~~Permit/Tag~~ shall be valid in Unit 11 only during even-numbered years and during odd-numbered years when the Special Bighorn Sheep ~~Permit/Tag~~ holder chooses not to hunt in Unit 11. (3-20-04)()

03. Permit. A ~~permit and~~ **controlled hunt** tag will be provided to the lottery tag winner from the net proceeds of the lottery. (7-1-93)()

04. Application of Big Game Rules. All Rules Governing the Taking of Big Game Animals shall apply to the eligible ticket purchasers and lottery tag winner, other than as specified herein. (7-1-93)

a. A person receiving a bighorn sheep lottery tag shall be eligible to purchase lottery tickets the following year for another bighorn sheep lottery tag. (3-30-01)

b. A person successful in taking a bighorn sheep with a bighorn sheep lottery tag shall be eligible to purchase lottery tickets the following year. (3-20-04)

c. Any person who wins a Bighorn Sheep Lottery ~~Permit/Tag~~, and who is otherwise eligible to apply for a deer, elk or ~~antelope pronghorn~~ controlled hunt ~~permit tag~~, shall be allowed to apply for a ~~permit controlled hunt~~ for those species during the same year the Bighorn Sheep Lottery ~~Permit/Tag~~ is valid. (3-30-01)()

801. -- 899. (RESERVED).

900. CHILDREN WITH SPECIAL NEEDS BIG GAME ~~PERMIT/TAG~~.

01. Availability. The Department shall make up to five (5) big game tags available for children with life threatening medical conditions each year. (3-29-10)

a. Any of the five (5) big game tags described in Section 901 that have not been issued by July 15 each year may also be available for children with life threatening conditions. (3-29-10)

02. Issuance. The Commission delegates discretionary authority to issue a special needs tag to the Director. (3-29-10)

03. Eligibility. In order to receive a special needs big game tag, a resident or nonresident minor (seventeen (17) years of age or younger) must have a life threatening medical condition as certified by a qualified and licensed physician. (3-29-10)

a. A qualified applicant must be sponsored by a nonprofit organization that is qualified under section 501(c) (3) of the Internal Revenue code. (3-8-07)

b. The primary mission of the sponsoring organization must be to offer opportunities and experiences to minor children with life threatening medical conditions. (3-8-07)

c. Minimum age requirements and hunter education requirements are waived for individuals applying for or receiving a special needs big game tag. (3-29-10)

04. Validity of ~~Permit~~ Tag. The special needs tag shall be valid for one (1) deer, one (1) elk, one (1) pronghorn, one (1) moose, one (1) black bear, or one (1) mountain lion as allowed by Commission proclamation. ~~(3-29-10)~~()

a. A license is not required to apply for or receive a special needs big game tag. (3-29-10)

b. The special needs tag is valid in any open hunt, controlled or general, as provided by Commission proclamation. (3-29-10)

c. Applicants may only receive one (1) special needs tag in a lifetime. (3-29-10)

d. In exercising hunting privileges, the holder of a special needs tag must be accompanied by an adult in possession of a valid Idaho big game hunting license. (3-29-10)

05. Application. Applications shall be on a form as prescribed by the Director. (3-8-07)

a. Applications shall be submitted on behalf of applicants by an eligible nonprofit organization. (3-8-07)

b. A copy of the nonprofit organization's IRS determination letter must accompany the application. (3-8-07)

06. Fees. All fees associated with applying for and receiving a special needs tag shall be waived. (3-29-10)

07. Hunters with Disabilities Permit Fees. All fees associated with applying for or receiving a Disabled Persons Motor Vehicle Hunting Permit or a Disabled Archery Permit by the recipient of a special needs tag are waived. (3-29-10)

08. Application of Big Game Rules. All rules governing the taking of Big Game Animals, IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho," shall apply to holders of a special needs big game tag. (3-8-07)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.06 - RULES GOVERNING CLASSIFICATION AND PROTECTION OF WILDLIFE

DOCKET NO. 13-0106-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b) and 36-201, Idaho Code.

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

Implement Senate Bill 1266 which classifies raccoons as predatory wildlife, and correct a statutory reference.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [September 1, 2010 Idaho Administrative Bulletin, Vol. 10-9, pages 41 through 43.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact W. Dallas Burkhalter (208) 334-3715.

DATED this 9th day of November, 2010.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **July 12, 2010**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2010.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Implement Senate Bill 1266 which classifies raccoons as predatory wildlife, and correct a statutory reference.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The temporary rule confers a benefit to certain hunters, and complies with amendment to Section 36-201, Idaho Code.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with the statutory amendment.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 29th day of July, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0106-1001

104. CLASSIFICATION OF WILDLIFE - FURBEARING ANIMALS.

- 01. Furbearing Animals.** (7-1-93)
- a.** American badger -- *Taxidea taxus*. (4-6-05)
- b.** American marten -- *Martes americana*. (4-6-05)
- c.** American mink -- *Mustela vison*. (4-6-05)
- d.** Beaver -- *Castor canadensis*. (7-1-93)
- e.** Bobcat -- *Lynx rufus*. (4-6-05)
- f.** Canada lynx -- *Lynx canadensis*. (4-6-05)
- g.** Common muskrat -- *Ondatra zibethicus*. (4-6-05)
- ~~**h.** Common raccoon -- *Procyon lotor*. (4-6-05)~~
- ih.** Fisher -- *Martes pennanti*. (7-1-93)
- ji.** Northern river otter -- *Lontra canadensis*. (4-6-05)
- kj.** Red fox -- *Vulpes vulpes*-includes all color phases found in Idaho. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

201. PREDATORY WILDLIFE.

- 01.** Common raccoon. *Procyon lotor* (7-12-10)T
- ~~02.~~ Coyote. *Canis latrans.* (7-1-93)
- ~~023.~~ Jackrabbit. *Lepus townsendii* and *L. californicus.* (7-1-93)
- ~~034.~~ Long-Tailed and Short-Tailed Weasel, Ermine. *Mustela frenata,* *Mustela erminea.* (4-6-05)
- ~~045.~~ Skunk. *Mephitis mephitis* and *Spilogale gracilis.* (7-1-93)
- ~~056.~~ Starling. *Sturnus vulgaris.* (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

300. PROTECTION OF WILDLIFE.

01. Game Species. Those species of wildlife classified as Big Game Animals, Upland Game Animals, Game Birds, Migratory Birds, Game Fish, Crustacea, or Furbearing Animals may be taken only in accordance with Idaho law and rules established by the Idaho Fish and Game Commission. (4-6-05)

02. Protected Nongame and Threatened or Endangered Species. No person shall take or possess those species of wildlife classified as Protected Nongame, or Threatened or Endangered at any time or in any manner, except as provided in Sections 36-106(e), 36-401, and 36-1107, Idaho Code, by Commission rule, or IDAPA 13.01.10, "Rules Governing the Importation, Possession, Release, Sale, or Salvage of Wildlife," Subsection 100.06.b. Protected Nongame status is not intended to prevent unintentional take of these species, protection of personal health and/or safety, limit property and building management, or prevent management of animals to address public health concerns or agricultural damage. (~~4-6-05~~)()

03. Unprotected and Predatory Wildlife. Those species of wildlife classified as Unprotected Wildlife and Predatory Wildlife may be taken in any amount, at any time, and in any manner not prohibited by state or federal law, by holders of the appropriate valid Idaho hunting, trapping, or combination hunting and fishing licenses, provided such taking is not in violation of state, county, or city laws, ordinances, or regulations. (7-1-93)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b), 36-1101, and 36-1202, Idaho Code.

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

Implement House Bill 416 which amends the definition of edible meat and expands the species exempt from waste. Implement House Bill 463 which requires amendment of existing Commission rules to allow nonresident deer or elk tags to be used for the take of black bear, mountain lion and wolf. Remove Units 48 and 57 from the Motorized Vehicle Rule. Allow the use of electronic calls for take of black bear, mountain lion and wolves in seasons specified by the Commission. Allow the take of wolves by trap or snare in seasons specified by the Commission. Prohibit the use of telemetry equipment as an aid to take of big game. Address depredation hunts for black bear and wolves. Extend the mandatory check and reporting requirements for harvested wolves. Update rules to reflect previous legislative (SB 1141aa-2009) and Commission actions, including the elimination of controlled hunt permits. Exchange of bear tags, and definitions of various tag types. Amend controlled hunt application requirements and address Mandatory Hunter Reports.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [September 1, 2010 Idaho Administrative Bulletin, Vol. 10-9, pages 44 through 65.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact W. Dallas Burkhalter (208) 334-3715.

DATED this 9th day of November, 2010.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **July 12, 2010**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b), 36-1101, and 36-1202, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2010.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Implement House Bill 416 which amends the definition of edible meat and expands the species exempt from waste. Implement House Bill 463 which requires amendment of existing Commission rules to allow nonresident deer or elk tags to be used for the take of black bear, mountain lion and wolf. Remove Units 48 and 57 from the Motorized Vehicle Rule. Allow the use of electronic calls for take of black bear, mountain lion and wolves in seasons specified by the Commission. Allow the take of wolves by trap or snare in seasons specified by the Commission. Prohibit the use of telemetry equipment as an aid to take of big game. Address depredation hunts for black bear and wolves. Extend the mandatory check and reporting requirements for harvested wolves. Update rules to reflect previous legislative (SB 1141aa-2009) and Commission actions, including the elimination of controlled hunt permits, exchange of bear tags and defines various tag types. Amend controlled hunt application requirements and address Mandatory Hunter Reports.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The temporary rule confers a benefit to certain hunters, and complies with amendments to Sections 36-104, 36-409, 36-416, 36-1104, 36-1104A, and 36-1202, Idaho Code.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with statutory amendments.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 29th day of July, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-1001

200. BAG AND POSSESSION LIMITS.

No person may take more than one (1) deer, elk, antelope pronghorn, moose, bighorn sheep, mountain goat, black bear, or gray wolf during a calendar year EXCEPT: (3-29-10)()

01. Depredation Hunts. In depredation hunts, one (1) additional deer, elk or antelope pronghorn, black bear, or gray wolf may be taken by persons holding permit tags for those hunts, EXCEPT those depredation hunt permitted hunters who were selected for depredation hunts prior to the controlled season for the unit(s) in which they hold a controlled hunt permit tag must include any animal they harvest within the restrictions imposed by the controlled hunt permit tag (no person may take more than one (1) animal per year by using depredation and controlled hunt permit tag). (7-1-93)()

02. Extra Tag Hunts. In extra tag hunts, one (1) additional deer, elk or *antelope pronghorn* may be taken by persons holding tags for those hunts. (7-1-93)()

03. Limits on Take -- Deer, Elk, *Antelope Pronghorn*. In no event shall any person take more deer, elk or *antelope pronghorn* in a calendar year than the number of tags the person legally possesses for each species. (3-30-01)()

04. Limits on Take -- Mountain Lion. No person may take more mountain lions during a calendar year than the number of tags the person legally possesses for mountain lions. (3-30-01)

05. Limits on Take -- Black Bear. No person may take more black bears during a calendar year than the number of tags the person legally possesses for black bears. (3-30-01)

06. Limits on Take -- Gray Wolf. No person may take more gray wolves during a calendar year than the number of tags they legally possess for gray wolves. (3-29-10)

201. -- 249. (RESERVED).

250. TAGS AND PERMITS.

No person shall hunt big game animals without having in possession the appropriate hunting license, tags, ~~stamps~~ and permits. (7-1-93)()

01. Use of Tags. (7-1-93)

a. ~~Permit/~~ *Controlled hunt* ~~T~~tags issued for moose, bighorn sheep, mountain goat and *antelope pronghorn* may be used only in the controlled hunt for which the *permittee hunter* was drawn. (7-1-93)()

~~**b.** *Tags issued for antelope archery hunts may be used only in general archery hunts.*~~ (7-1-93)

eb. Extra tags issued for deer, elk or *antelope pronghorn* may be used only in the hunt area for which the tags are issued. (7-1-93)()

~~**dc.** Any person who purchases a tag to hunt black bear, or *archery antelope*, who is unsuccessful in killing an animal, and who is subsequently drawn for a *black bear* controlled hunt *permit tag, including an antelope landowner preference permit, must may choose to purchase a controlled hunt bear tag or exchange the general season bear tag for the controlled hunt bear tag, the hunter must* return the unused tag to a Department office *not later than August 10* to exchange the tag for the appropriate controlled hunt tag. *The fee for the exchanged tag is the fee for a duplicate tag.*~~ (3-20-97)()

ed. *General season* ~~T~~tags issued for black bear and mountain lion may be used statewide. Extra tags issued for black bear and mountain lion may be used only in the hunt area for which the tags are issued. (4-5-00)()

fe. Regular tags issued for deer and elk may be used ONLY as follows: (7-1-93)

i. Regular Deer:

TYPE OF TAG	SEASONS
Resident (Type 311)	Any archery, muzzleloader or general deer season. EXCEPT in Clearwater Region, Units 8, 8A, 10, 10A, 11, 11A, 12, 13, 14, 15, 16, 16A, 17, 18, 19, & 20.
Resident (Type 330)	Extra Any antlerless deer tag season. EXCEPT in Clearwater Region, Units 8, 8A, 10, 10A, 11, 11A, 12, 13, 14, 15, 16, 16A, 17, 18, 19, and 20.
Senior Resident/Senior/Disabled American Veteran (DAV) (Type 330)	Any archery, muzzleloader or general deer season. EXCEPT in Clearwater Region, Units 8, 8A, 10, 10A, 11, 11A, 12, 13, 14, 15, 16, 16A, 17, 18, 19, & 20.
S.E. Idaho Area Units 75, 76, 77, and 78 Nonresident	To Hunt Deer in Units 75, 76, 77, and 78 you must have your deer tag validated for use in these units. These tags are limited to one thousand two hundred (1200) nonresident tags and will be issued by lottery. EXCEPT in Clearwater Region, Units 8, 8A, 10, 10A, 11, 11A, 12, 13, 14, 15, 16, 16A, 17, 18, 19, & 20.
Nonresident (Type 411)	Any archery, muzzleloader or general deer season or controlled hunt for which the permittee was drawn , or may be used to tag a black bear or mountain lion or gray wolf during the Regular deer season when the black bear or mountain lion or gray wolf season is open.
Combination Controlled Hunt Permit and Tag	Only the designated controlled hunt for which the permittee hunter was drawn.
Combination Controlled Depredation Hunt Permit and Tag	Only the designated controlled depredation hunt for which the permittee hunter was drawn.
Combination Controlled Hunt Permit and Extra Tag	Only the designated controlled extra tag hunt for which the permittee hunter was drawn.

(4-6-05)()

ii. ~~Elk A Tag: Valid only for A Tag elk seasons in specific elk zones.~~ **White-tailed deer.**

TYPE OF TAG	SEASONS
Resident White-tailed	Any elk archery, muzzleloader or general season in A Tag elk seasons in specific zones. To hunt white-tailed deer in any archery, muzzleloader or general white-tailed deer season.
Senior Resident Junior/Senior/Disabled American Veteran (DAV) White-tailed	Any elk archery, muzzleloader, or general season in A Tag seasons in specific zones. To hunt white-tailed deer in any archery, muzzleloader or general white-tailed deer season.
Nonresident White-tailed	Any elk archery, muzzleloader, or general season in A Tag elk seasons in specific zones, or controlled hunt for which the permittee was drawn. To hunt white-tailed deer in any archery, muzzleloader or general white-tailed deer season or may be used to tag a black bear, mountain lion or gray wolf during the white-tailed deer season when the black bear, mountain lion or gray wolf season is open.

TYPE OF TAG	SEASONS
Combination Controlled Hunt Permit and Tag <u>Nonresident White-tailed Junior Mentored</u>	Only the designated controlled hunt for which the Tag permittee was drawn. <u>Any archery, muzzleloader or general white-tailed deer season.</u>
Combination Controlled Depredation Hunt Permit and Tag	Only the designated controlled depredation hunt for which the permittee was drawn.
Combination Controlled Hunt Permit and Extra Tag	Only the designated controlled extra tag hunt for which the permittee was drawn.

(3-29-10)()

iii. Elk B A Tag: Valid only for B A Tag elk seasons in specific elk zones.

TYPE OF TAG	SEASONS
Resident	Any archery, muzzleloader, or general <u>season</u> in <u>B A</u> Tag elk seasons in specific zones.
Senior Resident Junior/Senior/Disabled American Veteran (DAV)	Any archery, muzzleloader, or general <u>season</u> in <u>B A</u> Tag elk seasons in specific zones.
Nonresident	Any elk controlled hunt for which the permittee was drawn or any archery, muzzleloader, or general in B Tag <u>archery, muzzleloader, or general season in A tag</u> elk seasons in specific zones. <u>May be used to tag a black bear or mountain lion or gray wolf during the open elk season for the zone the elk tag is valid in when the black bear, mountain lion or gray wolf season is open.</u>
<u>Nonresident Junior Mentored</u>	<u>Any archery, muzzleloader, or general season in A Tag elk season in specific zones.</u>
Combination Controlled Hunt Permit and Tag	Only the designated controlled hunt for which the permittee <u>hunter</u> was drawn.
Combination Controlled Depredation Hunt Permit and Tag	Only the designated controlled depredation hunt for which the permittee <u>hunter</u> was drawn.
Combination Controlled Permit and Extra Tag	Only the designated controlled and extra tag hunt for which the permittee <u>hunter</u> was drawn.

(4-6-05)()

iv. Elk B Tag: Valid only for B Tag elk seasons in specified zones.

<u>TYPE OF TAG</u>	<u>SEASONS</u>
<u>Resident</u>	<u>Any archery, muzzleloader, or general season in B Tag elk seasons in specific zones.</u>

TYPE OF TAG	SEASONS
<u>Junior/Senior/Disabled American Veteran (DAV)</u>	<u>Any archery, muzzleloader, or general season in B Tag elk seasons in specific zones.</u>
<u>Nonresident</u>	<u>Any elk archery, muzzleloader, or general season in B tag elk seasons in specific zones. May be used to tag a black bear or mountain lion or gray wolf during the open elk season for the zone the elk tag is valid in when the black bear, mountain lion or gray wolf season is open.</u>
<u>Nonresident Junior Mentored</u>	<u>Any archery, muzzleloader, or general season in B Tag elk season in specific zones.</u>
<u>Controlled Hunt Tag</u>	<u>Only the designated controlled hunt for which the hunter was drawn.</u>
<u>Controlled Depredation Hunt Tag</u>	<u>Only the designated controlled depredation hunt for which the hunter was drawn.</u>
<u>Controlled Hunt Extra Tag</u>	<u>Only the designated controlled and extra tag hunt for which the hunter was drawn.</u>

()

iv. Super Tag.

TYPE OF TAG	SEASONS
<u>Combination</u> Controlled Hunt <u>Permit and</u> "Super" Tag	Valid for either <u>antelope</u> <u>pronghorn</u> , deer, <u>moose</u> , or elk and allows the hunter to hunt in any open and/or controlled hunt for the selected species.

~~(3-15-02)~~()

gf. Nonresident Junior Mentored Deer or Elk tags are not valid for bear, mountain lion, or gray wolf. (3-29-10)()

hg. Any person hunting with a Nonresident Junior Mentored License or tag must be accompanied in the field by an adult license holder close enough to be within normal conversation or hearing range without shouting or the aid of electronic devices. (4-6-05)

ih. Any adult accompanying the holder of a Nonresident Junior Mentored Tag must have a tag for the same species, valid in the same area. (4-6-05)

ji. Regular tags issued for gray wolf may be used ONLY as allowed by the gray wolf seasons and quotas set by Commission proclamation under Section 36-105(3), Idaho Code. The proclamation is published in a brochure available at Department offices and license vendors. (3-29-10)

02. Return of Tags by Unsuccessful Permittees Hunters. Permittees Hunters who are not successful in killing a bighorn sheep, mountain goat or moose shall present or mail their unused tags to a Department office within ten (10) days after the close of the season for which the

tag was valid. Canceled tags will be returned to the hunter upon request. (5-15-95)()

03. Archery and Muzzleloader Permits. Any person hunting in an archery only or muzzleloader only season must have the appropriate permit (archery or muzzleloader) for the relevant season validated on their license. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

260. PERMITS TAGS FOR CONTROLLED HUNTS.

01. Use of Controlled Hunt ~~Permits~~ Tags. No person may hunt in any controlled hunt without having a valid controlled hunt ~~permit~~ tag in possession. (7-1-93)()

a. A controlled hunt area with an “X” suffix is an extra tag hunt. (10-26-94)

b. In the event a ~~permit~~ tag is issued based on erroneous information, the ~~permit~~ tag will be invalidated by the Department and may NOT be used. The Department will notify the ~~permittee~~ hunter of the invalidation of the ~~permit~~ tag. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (7-1-93)()

c. Any person who ~~receives~~ draws a controlled hunt ~~permit and~~ tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT: ~~the holder of a deer controlled hunt permit and tag may purchase a tag for and hunt in an extra tag hunt, or controlled hunt permit/extra tag hunt for deer.~~ (3-20-97)()

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first deer drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. ()

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. ()

iii. The holder of a deer controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for deer. ()

iv. Any person who draws a controlled hunt extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. ()

~~d. Any person who receives a combination controlled hunt permit/extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. (7-1-93)~~

ed. Any person who ~~receives~~ draws a controlled hunt ~~permit~~ tag for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT: ~~a controlled~~

~~hunt permit holder may purchase a tag for and hunt in an extra tag hunt for elk. (7-1-93)()~~

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first elk drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. ()

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. ()

iii. The holder of an elk controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for elk. ()

iv. Any person who draws a controlled hunt extra tag for elk may hunt in any other elk hunt-archery, muzzleloader, general or controlled hunt. ()

~~fe. Any person who receives draws a combination controlled hunt permit/tag for antelope pronghorn is prohibited from hunting in any archery antelope other pronghorn hunt; EXCEPT: The holder of an antelope combination controlled hunt permit/extra tag may apply for a combination controlled hunt permit/tag for antelope or may purchase a tag for an archery antelope hunt. (7-1-93)()~~

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first pronghorn drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. ()

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. ()

iii. The holder of a pronghorn controlled hunt tag may purchase a controlled hunt extra tag for pronghorn. ()

iv. Any person who draws a pronghorn controlled hunt extra tag may apply for a controlled hunt tag for pronghorn. ()

~~gf. Any person who receives draws a spring controlled hunt permit tag for black bear, is prohibited from hunting in any other spring bear hunt—April 15 to June 30. may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag. (7-1-99)()~~

~~hg. Any person who receives draws a fall controlled hunt permit tag for black bear is prohibited from hunting in any other fall bear hunts—September 15 to October 31. may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the~~

appropriate controlled hunt tag: EXCEPT; the hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the fall bear drawing. ~~(10-26-94)~~()

02. Nonresident Permit Tag Limitations. (3-20-04)()

a. In controlled hunts with ten (10) or fewer permits tags, not more than one (1) nonresident permit tag will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) permits tags, not more than ten percent (10%) of the permits tags will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt and to the controlled hunts for each species. (4-6-05)()

b. Outfitter allocated hunts are exempt from the limitation of Subsection 260.02.a. (3-20-04)

c. For each species, the total number of outfitter allocated controlled hunt permits tags shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt permits tags; including outfitter allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt permits tags that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (3-20-04)()

03. Eligibility. Any person possessing a valid Idaho hunting license is eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

a. Holders of a Nongame Hunting License (Type 208) may not apply for any controlled hunt. (4-6-05)

b. Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn permit tag for two (2) years. Except that a person may apply for a bighorn tag in the second application period or a leftover bighorn tag the following year. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat permit tag for two (2) years. Except that a person may apply for a mountain goat tag in the second application period or a leftover mountain goat tag the following year. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Except that a person may apply for a moose tag in the second application period or a leftover moose tag the following year. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Except that a person may apply for an antlered-only deer tag in the second application period or a leftover antlered-only deer tag the following year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. Except that a person may apply for an antlered-only elk tag in the second application period or a leftover antlered-only elk tag the following year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of permits tags nor Landowner Preference-Permits Appreciation Program tags. EXCEPT all successful and unsuccessful antelope pronghorn, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) "Super" controlled antelope pronghorn/deer/elk tags to hunt in any open general and/or controlled antelope pronghorn, deer or elk hunt in the following hunting season. (3-15-02)()

c. Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, a controlled gray wolf hunt, or a designated depredation or extra tag hunt for deer, elk or antelope pronghorn. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in second application period for deer, elk, and pronghorn and the first-come, first-served deer, elk and antelope pronghorn controlled hunt permit sales. (3-29-10)()

d. Any person who has killed a California bighorn ram, ~~or a~~ Rocky Mountain bighorn ram ~~or a moose~~ on any controlled hunt may not apply for a permit tag for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram permit tag for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram permit tag for any hunt south of Interstate Highway 84. Auction tag and lottery tag winners are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-5-00)()

e. No person applying for a Rocky Mountain bighorn sheep controlled hunt as a first choice shall apply for a California bighorn sheep controlled hunt as a second choice. No person applying for a California bighorn sheep controlled hunt as a first choice shall apply for a Rocky Mountain bighorn sheep controlled hunt as a second choice. No person shall apply for both a Rocky Mountain and a California bighorn the same year. (7-1-93)

f. Any person who kills a bighorn ewe may not apply for another bighorn ewe controlled hunt permit tag for five (5) years. The harvest of a bighorn ewe does not make the permitted hunter ineligible to apply for a permit tag to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe may not apply for any bighorn ram the same year. (7-1-93)()

g. Any person who has killed a mountain goat since 1977 may not apply for a mountain goat permit tag. (7-1-93)()

h. Any person who has killed an antlered moose in Idaho may not apply for a moose permit tag for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a permit tag for antlerless moose EXCEPT that any person may apply for permits tags remaining unfilled after the controlled hunt draw. (4-11-06)()

i. Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. (7-1-98)

j. Any person may apply for both a controlled hunt ~~permit~~ tag and a controlled hunt ~~permit~~ extra tag. (7-1-93)()

k. Nonresident hound hunters applying for controlled black bear hunts must first

obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, “Rules Governing the Use of Dogs.” (7-1-99)

l. Any person applying for an outfitter allocated controlled hunt must have a written agreement with the outfitter before submitting the controlled hunt application. (4-11-06)

m. The Commission establishes youth only controlled hunts by proclamation. Only hunters twelve (12) to seventeen (17) years of age with a valid license may apply for youth only controlled hunts, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth only controlled hunt permits. (5-8-09)

04. Applications. Individual applications or group applications for controlled hunts ~~shall be made on a form prescribed by the Department and must be received at~~ may be submitted electronically through the automated licensing system at any vendor location, through the Internet, over the telephone, or by mail to the Headquarters Office of the Idaho Department of Fish and Game or any Idaho Fish and Game Regional Office and shall be submitted with a postmarked not later than the annual dates shown below. Any individual application or group application which is unreadable, has incomplete or incorrect hunt or license numbers, or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; ~~they may not be resubmitted after correction~~ EXCEPT: applicants who would like to change their submitted controlled hunt application may request the original application be cancelled to resubmit a new controlled hunt application during the applicable application period. The new application is subject to the appropriate application fees. (~~10-26-94~~)()

a. Spring black bear - Application period - January 15 - February 15. (4-6-05)

b. Moose, bighorn sheep, and mountain goat - Application period for first drawing - April 1 - 30. (4-6-05)

c. Deer, elk, antelope pronghorn, fall black bear, and gray wolves - Application period for first drawing - May 1 - June 5. (~~3-29-10~~)()

d. Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15 - 25. (4-6-05)

e. Deer, elk, antelope pronghorn, fall black bear, and gray wolves - Application period for second drawing - August 5 - 15. (~~3-29-10~~)()

05. Applicant Requirements. Applicants must comply with the following requirements: (7-1-93)

a. Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt ~~permit~~ extra tag for the same species. Additional applications for the same person or group for the same species will result in all applicants being declared ineligible. (~~10-26-94~~)()

b. Only one (1) controlled hunt ~~permit~~/extra tag will be issued for each person on any application submitted. ~~(10-26-94)~~()

c. Several applications may be submitted in a single envelope so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt ~~permit~~/tag hunts or controlled hunt ~~permit~~/extra tag hunts. ~~(10-26-94)~~()

d. Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, ~~antelope~~ **pronghorn**, moose, bighorn sheep, mountain goat, black bear, ~~lion~~, and gray wolf, applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, ~~antelope~~ **pronghorn**, black bear, ~~mountain lion~~, or gray wolf. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a ~~permit~~ tag in the mail. ~~(3-29-10)~~()

e. Any controlled hunt ~~permits~~ **tags**, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold ~~forty five (45) days following the close of each respective controlled hunt drawing~~ by any Point-of-Sale vendor, **through the Internet, or over the telephone** on a first-come, first-served basis **on the dates below** UNLESS such day is a Sunday **or legal holiday**, in which case the permits will go on sale the next legal business day. A controlled hunt ~~permit application~~ and tag will be issued to successful ~~applicants~~ **controlled hunt purchasers**. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. ~~The fee for the exchanged tag is the fee for a duplicate tag.~~ ~~(3-15-02)~~()

i. **Spring Turkey and Spring Bear - April 1.** ()

ii. **Moose, Bighorn Sheep and Mountain Goat - July 10.** ()

iii. **Deer, Elk, Pronghorn and Fall Bear - August 25.** ()

f. A “group application” for deer, elk, and ~~antelope~~ **pronghorn** is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete applications properly. All applicants must abide by the same first and second hunt choices. ~~(10-26-94)~~()

g. A “group application” for moose, bighorn sheep, mountain goat, black bear, and gray wolf, is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (3-29-10)

h. If a group application exceeds the number of ~~permits~~ **tags** available in a hunt that

group application will not be selected for that hunt.

~~(7-1-98)~~()

i. Landowner permission hunt ~~permits tags~~ will be sold first-come, first-served basis at the Headquarters or regional offices of the Idaho Department of Fish and Game after July 15.

~~(3-29-10)~~()

06. Refunds of Controlled Hunt Fees.

(7-1-93)

a. Controlled hunt tag fees will be refunded to the unsuccessful or ineligible applicants for moose, sheep, and mountain goat. Unsuccessful applicants may donate all or a portion of their tag fee for moose, bighorn sheep, and mountain goat to Citizens Against Poaching by checking the appropriate box on the application. One dollar (\$1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise.

(3-20-97)

b. Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants.

(10-26-94)

c. Fees for deer or elk tags purchased prior to the drawing will NOT be refunded to unsuccessful or ineligible applicants.

(10-26-94)

d. Overpayment of fees of more than five dollars (\$5) will be refunded. Overpayment of five dollars (\$5) or less will NOT be refunded and will be retained by the Department.

(7-1-93)

e. Application fees are nonrefundable.

()

07. Controlled Hunt Drawing. Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing, provided the second choice hunt applied for has not been filled.

(7-1-93)

08. Unclaimed ~~Permits Tags~~. Successful applicants for the first deer, elk, black bear, gray wolf, or ~~antelope pronghorn~~ controlled hunt drawing must purchase and pick up their controlled hunt ~~permit and~~ tag by August 1. All controlled hunt tags ~~and permits~~ not purchased and picked up will be entered into a second controlled hunt drawing. Any controlled hunt tags ~~and permits~~ left over or unclaimed after the second controlled hunt drawing will be sold on a first-come, first-served basis.

~~(3-29-10)~~()

09. Second Drawing Exclusion. The Director may designate certain leftover controlled hunt tags to become immediately available on a first-come, first-served over-the-counter basis due to the dates of the hunt.

(3-29-10)

261. SPECIAL CONTROLLED HUNTS.

01. Special Controlled Hunt Program. The Special Controlled Hunt ~~Permit~~ Program is a program to partially fund a sportsman access program adopted by the Fish and Game Commission. This program will offer forty (40) tags valid for the current year hunting seasons; including, twelve (12) tags each for elk, deer, and ~~antelope pronghorn~~, and four (4) tags for moose.

~~(4-11-06)~~()

a. The rules for controlled hunts set forth in Section 260, of these rules, do not apply to the Special Controlled Hunt Program. (4-11-06)

b. The Special Controlled Hunt application will be marketed by the Department of Fish and Game. The Department will issue these tags to eligible persons selected by an impartial random lottery draw process. The successful applicants will receive the tag ~~and controlled hunt permit~~ necessary to hunt the appropriate species. The Department's various license issuing systems and other methods may be used to market the applications. (4-11-06)()

02. Moneys. The Department shall deposit all moneys received from the sale of Special Controlled Hunt Applications in accordance with state law. The Department shall specifically use funds for the sportsman access program. (4-11-06)

03. General Rules. (4-11-06)

a. Any individual, resident or nonresident, may purchase and submit applications without limit. (4-11-06)

b. ~~Blank s~~Special controlled hunt applications may be ~~given or transferred to other individuals, or~~ entered in the name of individuals other than the purchaser. (4-11-06)()

c. Each successful applicant must have or be eligible to obtain a valid Idaho hunting license. (4-11-06)

d. Each tag will be issued to the individual named on the drawn application that meets license eligibility requirements and cannot be transferred. (4-11-06)

e. An individual may be drawn for only one (1) special controlled hunt tag for each species. (4-11-06)

f. Each special controlled hunt tag is valid for the designated species and allows the hunter to hunt in any open hunt, general or controlled, for the designated species in the applicable year's season. (4-11-06)

g. The special controlled hunt tag shall be in addition to any other tag the hunter is eligible to obtain. (4-11-06)

h. Any applicant, including those who harvest an animal on a special controlled hunt tag, shall be eligible to apply for any controlled hunt for the same species in the same year or subsequent years. (4-11-06)

i. ~~Prior to the Department issuing any license, tag or permit to a successful applicant, the individual must complete and sign a statement certifying his eligibility to obtain and possess an Idaho hunting license and the required permits and tags.~~ In the event a license, tag or permit is issued based on erroneous information, all documents issued based on the erroneous information will be invalidated by the Department and may not be used. The Department will notify the individual at his last known place of residence of the invalidation of the license, tag or

permit.

~~(4-11-06)~~()

04. Application Fees. The Commission intent for this special controlled hunt program is to provide some of the funding for a statewide sportsman access program. Applications may be sold for individual species (Super Hunt) or grouped for combined species (Super Hunt Combo). The application fees will be set by Commission Order under Section 36-415, Idaho Code, or will be the same as the controlled hunt fee set in Section 36-416, Idaho Code. (4-11-06)

05. Drawing Dates. There will be two (2) drawings. All drawings shall be held at ~~10 a.m. at~~ the Department of Fish and Game offices in Boise, Idaho. The first drawing winners will be ~~on or about~~ notified by June 15~~0~~, and the second drawing winners will be ~~on or about~~ notified by August 15 each year. The Commission may order a different drawing day in case of business emergency, holiday, or non-business days. ~~(4-11-06)~~()

06. Department Marketed Applications. (4-11-06)

a. Individual applications for special controlled hunts shall be made on a form prescribed by the Department ~~or submitted electronically at any Fish and Game Headquarters or Regional Offices, any license vendor, through the Internet or over the telephone.~~ ~~(4-11-06)~~()

b. ~~All Mailed~~ applications must be received at the Licenses Section, Headquarters Office, Idaho Department of Fish and Game, 1075 Park Blvd., PO Box 25, Boise, Idaho 83707-0025, no later than 5 p.m. (MST), May 31 of the current calendar year for the first drawing and no later than 5 p.m. (MST), ~~July 31~~ August 10, of the current calendar year for the second drawing. ~~Electronically submitted applications must be entered no later than 11:59 p.m. (MST), May 31 of the current calendar year for the first drawing and no later than 11:59 p.m. (MST), August 10 of the current calendar year for the second drawing.~~ Applications received ~~or electronically submitted~~ after ~~July 31~~ August 10 shall be ineligible for ~~any~~ the drawing held in June of the following year. ~~If either drawing date is a Saturday, Sunday or other legal holiday, then the applications must be received on the next legal business day.~~ ~~(4-11-06)~~()

c. All applications entered into the first drawing are not eligible for and will not be entered into the second drawing. (4-11-06)

d. Any individual application that is unreadable, has multiple or no species box checked, has incomplete or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; they may not be resubmitted after correction. (4-11-06)

e. The Department shall sell applications through its electronic licensing system ~~from~~ July 28 through November 30. ~~(4-11-06)~~()

f. ~~For each tag available, the Department shall draw one (1) winner and two (2) alternates. All alternates will be drawn after all winners have been drawn.~~ Should the winner be ineligible, deceased or incapacitated to hunt, the first alternate drawn will be declared the winner. Should the first alternate be ineligible, deceased or incapacitated to hunt, the second alternate drawn will declared the winner. Should the second alternate be ineligible, deceased or incapacitated to hunt, that special controlled hunt ~~permit tag~~ shall be null and void and shall not be

issued to any other person. ~~The names and addresses of the alternates shall be confidential until the winner is issued all required licenses, tags or permits.~~ (4-11-06)()

07. Refunds of Special Controlled Hunt Fees. (4-11-06)

a. The application fee is not refundable. (4-11-06)

b. The special controlled hunt tag, ~~permit~~ and related hunting license are not refundable for any reason. (4-11-06)()

262. -- 269. (RESERVED).

270. MANDATORY SCHOOL.

~~Mandatory Class for Deer Hunt Area 39-3.~~ Anyone drawing a ~~deer~~ controlled archery-only hunt ~~permit for controlled hunt area 39-3~~ tag that requires a mandatory hunter orientation class as denoted in the season proclamations must attend ~~a~~ the mandatory hunter orientation class. The class is three (3) hours long and will be offered at times specified by the Department. The orientation classes will be offered on ten (10) dates between October 15 and November 15. Since classroom size is limited, each ~~permittee~~ hunter must schedule a time to attend a class prior to October 15. Attendees will be issued a certificate of completion, which must be carried by the ~~permittee~~ hunter during the hunt. Holders of "Certificates of Completion" from previous hunts are not required to attend this orientation class. (4-6-05)()

271. WOLF TRAPPING.

01. Mandatory Wolf Trapper Education Class. Individuals interested in trapping wolves must successfully complete a wolf trapping education class held by the Idaho Department of Fish and Game prior to purchasing a wolf trapping permit. A certificate of completion will be required to purchase the wolf trapping permit. Trappers who complete the class will not be required to take the class again in the future to purchase a wolf trapping permit. ()

02. Wolf Trapping Permits. Wolf trapping permits will be available only at Idaho Department of Fish and Game offices. ()

272. -- 299. (RESERVED).

300. IDENTIFICATION OF ANIMALS THAT LEGALLY MAY BE TAKEN.

01. Big Game Animals of Either Sex. Big game animals of either sex may be taken as noted below: (7-1-93)

a. Mountain Goat. Either sex may be taken EXCEPT nannies accompanied by kids. (7-1-93)

b. Black Bear. Either sex may be taken EXCEPT female black bears accompanied by young. (7-1-93)

c. Mountain Lion. Either sex may be taken EXCEPT spotted young or females

- accompanied by young. (7-1-93)
- d.** Gray Wolf. Either sex may be taken. (3-29-10)
- 02. Seasons Restricted to Antlered or Male Animals Only.** (7-1-93)
- a.** Deer. Only deer with at least one (1) antler longer than three (3) inches may be taken in any season which is open for antlered deer only. (7-1-93)
- b.** Two-point deer. Only deer with not more than two (2) points on one (1) antler, not including brow point, and at least one (1) antler longer than three (3) inches may be taken in any season which is open for two-point deer only. A point is an antler projection that is at least one (1) inch long and longer than the width of the projection. (7-1-99)
- c.** Three-point deer. Only deer having at least one (1) antler with three (3) or more points not counting the brow point or tine may be taken in any season which is open for three-point or larger deer only. A point is an antler projection that is at least one (1) inch long and longer than the width of the projection. (3-15-02)
- d.** Four-point deer. Only deer having at least one (1) antler with four (4) or more points, not including the brow point or tine, may be taken in any season that is open for four-point or larger deer only. (4-6-05)
- e.** Elk. Only elk with at least one (1) antler longer than six (6) inches may be taken in any season which is open for antlered elk only. (7-1-99)
- f.** Spike elk. Only elk with no branching on either antler and at least one (1) antler longer than six (6) inches may be taken in any season which is open for spike elk only. A branch is an antler projection that is at least one (1) inch long and longer than the width of the projection. (7-1-99)
- g.** Brow-tined elk. Any elk having an antler or antlers with a visible point on the lower half of either main beam that is greater than or equal to four (4) inches long. (3-15-02)
- h.** Moose. Only moose with at least one (1) antler longer than six (6) inches may be taken in any season open for antlered moose only. (7-1-93)
- 03. Seasons Restricted to Antlerless or Female Animals Only.** (7-1-93)
- a.** Deer. Only deer without antlers or with antlers shorter than three (3) inches may be taken in any season which is open for antlerless deer only. (7-1-93)
- b.** Elk. Only elk without antlers or with antlers shorter than six (6) inches may be taken in any season which is open for antlerless elk only. (7-1-93)
- c.** Antelope Pronghorn. Only antelope pronghorn without a black “cheek patch” or horns less than three (3) inches long may be taken during doe and fawn only antelope pronghorn seasons. (7-1-93)()

d. Bighorn sheep. Only bighorn sheep with horns between six (6) inches and twelve (12) inches in length may be taken in any season which is open for bighorn ewes only. (7-1-93)

e. Moose. Only moose without antlers or with antlers less than six (6) inches long may be taken in any season which is open for antlerless moose only. (7-1-93)

301. -- 319. (RESERVED).

320. TAG VALIDATION AND ATTACHMENT AND PROXY STATEMENT.

01. Tag. Immediately after any deer, elk, ~~antelope~~ pronghorn, moose, bighorn sheep, mountain goat, mountain lion, black bear, or gray wolf is killed, the appropriate big game animal tag must be validated and securely attached to the animal. ~~(3-29-10)~~()

a. Validation. Cut out and completely remove only the two (2) triangles indicating the date and month of kill. (7-1-93)

b. Attachment of Tag. (7-1-93)

i. Deer, elk, ~~antelope~~ pronghorn, moose, mountain goat, black bear, and bighorn sheep: to the largest portion of the ~~carcass~~ edible meat to be retained by the hunter or any person transporting for the hunter. The tag must remain attached during transit to a place of processing and must remain attached until the meat is processed. The validated tag must accompany the processed meat to the place of final storage or final consumption. ~~(10-26-94)~~()

ii. Mountain lion, ~~black bear~~, and gray wolf: To the hide. ~~(3-29-10)~~()

02. Proxy Statement. Any person transporting or possessing any portion of a carcass of a big game animal or processed big game animal meat taken by another must have in possession a written statement signed by the taker showing the number and kinds of animals, the date taken, the taker's name and address, the taker's hunting license number, and the taker's tag ~~and/or permit~~ number. ~~(7-1-93)~~()

321. -- 349. (RESERVED).

350. IDENTIFICATION OF SEX, SIZE, AND/OR SPECIES IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.

01. Evidence of Sex. Evidence of sex must be left naturally attached to the carcass of any big game animal. (4-6-05)

a. In antlered or male only seasons, the evidence of sex requirement is met when the head, horns, or antlers are left naturally attached to the whole carcass or to a front quarter. If the head, horns, or antlers are removed, some other external evidence of sex (either scrotum, penis or testicles) must be left naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption, or a commercial meat processing facility; AND the horns or antlers must accompany the carcass while in transit. (5-8-09)

b. In spike elk or two-point (2) deer only seasons, the evidence of sex requirement is met when the head with both complete unaltered antlers are left naturally attached to the whole carcass or to a front quarter. If the head or antlers are removed, some other external evidence of sex (either scrotum, penis or testicles) must be left or a commercial meat processing facility naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption; AND both complete unaltered antlers naturally attached to each other must accompany the carcass while in transit. (5-8-09)

c. In antlerless, doe/fawn or female only seasons, if the head is removed from female elk, moose, deer, *antelope pronghorn*, or bighorn sheep, some other external evidence of sex (either udder or the vulva) must be left naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption or a commercial meat processing facility. (5-8-09)()

d. The entire head of antlerless male elk, moose, deer, or *antelope pronghorn*, or a male lamb bighorn sheep killed during an antlerless, female, doe/fawn or ewe only season, may be left naturally attached to the carcass or to a front quarter until the carcass reaches the final place of storage or consumption. If the head is removed, some other external evidence of sex (either scrotum, penis, or testicles) must be left naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption, or a commercial meat processing facility, AND the lower jaw must accompany the carcass while in transit. (5-8-09)()

e. For black bear, mountain lion, and gray wolf external evidence of sex (either scrotum, penis or testicles for males, or vulva for females) must be left naturally attached to the hide until the mandatory check has been complied with. (3-29-10)

02. Evidence of Species. In seasons restricted to mule deer only or white-tailed deer only, if the head is removed, the fully-haired tail must be left naturally attached to the carcass. (7-1-93)

03. Evidence of Size. Any hunter taking a bighorn ram must leave that portion of the skull plate containing the upper one-half (1/2) of the eye socket naturally attached to both of the horns until after the horns have been pinned by the Department. (7-1-93)

04. Other. The Department may designate seasons and areas in which the head or lower jaw must accompany the carcass in transit. (7-1-93)

351. WASTE OF GAME MEAT.

Hunters are required to remove and care for the edible meat of big game animals, except mountain lions, *black bears* and gray wolves. This includes the meat of the front quarters including the meat surrounding the ball joint as far down as the knees, hindquarters as far down as the hock, ~~neck meat, and~~ meat along the backbone, ~~and meat covering the ribs. It does not include meat of the head, internal organs and meat on the bones after close trimming~~ which is the loin and tenderloin. (3-29-10)()

(BREAK IN CONTINUITY OF SECTIONS)

410. UNLAWFUL METHODS OF TAKE.

No person shall take big game animals as outlined in this section. (7-1-93)

01. Firearms. (7-1-93)

a. With any firearm that, in combination with a scope, sling, and/or any other attachments, weighs more than sixteen (16) pounds. (7-1-93)

b. With any shotgun using any shot smaller than double-aught (#00) buck. (7-1-93)

c. With any rimfire rifle, rimfire handgun or any muzzleloading handgun, EXCEPT for mountain lion. (7-1-93)

d. With a fully automatic firearm. (10-26-94)

e. With any electronic device attached to, or incorporated in, the firearm (including handguns and shotguns) or scope; except scopes containing battery powered or tritium lighted reticles are allowed. (4-2-08)

02. Bows, Crossbows, Arrows, Bolts, Chemicals or Explosives. (3-20-97)

a. With arrows or bolts having broadheads measuring less than seven-eighths (7/8) inch in width and having a primary cutting edge less than fifteenth-thousandths (0.015) inch thick. (7-1-93)

b. With any bow having a peak draw weight of less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of less than one hundred-fifty (150) pounds. (3-20-97)

c. With any chemicals or explosives attached to the arrow or bolt. (7-1-93)

d. With arrows or bolts having expanding broadheads. (7-1-93)

e. With arrows or bolts having barbed broadheads. A barbed broadhead is a broadhead which has any portion of the rear edge of the broadhead forming an angle less than ninety (90) degrees with the shaft or ferrule. (7-1-93)

f. With any electronic or tritium-powered device attached to, or incorporated into, an arrow, bolt, crossbow, or bow (except nonmagnifying scopes containing battery powered or tritium lighted reticles may be used by disabled archery permit holders). (5-8-09)

g. With any bow capable of shooting more than one (1) arrow at a time. (7-1-93)

h. With any compound bow with more than eighty-five percent (85%) let-off. (4-2-08)

- i.** With an arrow and broadhead, or bolt and broadhead, with a combined total weight of less than three hundred (300) grains. (4-2-08)
- j.** With an arrow less than twenty-four (24) inches or a crossbow bolt less than twelve (12) inches in length from the broadhead to the nock inclusive. (4-2-08)
- k.** With an arrow wherein the broadhead does not proceed the shaft and nock. (3-30-01)
- l.** During an *Archery Only* season, with any firearm, crossbow (except holders of handicapped archery permits), or other implement other than a longbow, compound bow, or recurve bow, or: (3-30-07)

 - i.** With any device attached that holds a bow at partial or full draw (except holders of handicapped archery permits). (3-30-07)
 - ii.** With any bow or crossbow equipped with magnifying sights. (3-20-97)
- m.** During a *Traditional Archery Only* season, with any firearm, crossbow, or other implement other than a longbow or recurve bow, or: (3-15-02)

 - i.** With an arrow not constructed of wood or fletched with non-natural material. (3-15-02)
 - ii.** With any bow equipped with sights. (3-15-02)
- n.** With any crossbow pistol. (3-20-97)
- 03. Muzzleloaders.** (7-1-93)

 - a.** With a muzzleloading rifle or musket which is less than forty-five (.45) caliber for deer, *antelope pronghorn*, mountain lion, or gray wolf, or which is less than fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. (~~3-29-10~~)()
 - b.** With any electronic device attached to, or incorporated in, the muzzleloader. (3-30-01)
 - c.** During a *Muzzleloader Only* season, with any firearm, muzzleloading pistol or other implement other than a muzzleloading rifle or musket which: (7-1-93)

 - i.** Is at least forty-five (.45) caliber for deer, *antelope pronghorn*, mountain lion, or gray wolf, or at least fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat or black bear. (~~3-29-10~~)()
 - ii.** Is capable of being loaded only from the muzzle. (7-1-93)
 - iii.** Is equipped only with open or peep sights. (7-1-93)

- iv. Is loaded only with loose black powder or, loose Pyrodex or other loose synthetic black powder. Pelletized powders are prohibited. (4-2-08)
- v. Is equipped with no more than two (2) barrels. (7-1-93)
- vi. Is loaded only with a projectile with a diameter within one hundredth (.01) of an inch of the bore diameter. Sabots are prohibited. (4-2-08)
- vii. Is equipped only with flint, musket cap, or percussion cap. 209 primers are prohibited. (4-2-08)
- viii. Is equipped with an exposed ignition system. (5-8-09)
- ix. Is loaded only with a patched round ball or conical non-jacketed projectile comprised wholly of lead or lead alloy. Sabots are not allowed. (4-11-06)

04. Short-Range Weapon. During Short-Range Weapon ONLY seasons ONLY the following weapons may be used: (7-1-99)

- a. With any shotgun using any slug or double-aught (#00) or larger buckshot. (7-1-99)
- b. With any muzzleloader that is at least forty-five (0.45) caliber for deer, antelope pronghorn, mountain lion, or gray wolf, or at least fifty (0.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. ~~(3-29-10)~~()
- c. With any bow having a peak draw weight of not less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of not less than one hundred fifty (150) pounds. (7-1-99)
- d. With any handgun using straight wall centerfire cartridges not originally developed for rifles. (3-29-10)

05. Other. (7-1-93)

- a. With electronic calls EXCEPT for the hunting of mountain lions, ~~in Units 41, 42 and that portion of Unit 12 north of State Highway 12 southwest of the Doe Creek Road (Forest Service Road 566) and northeast of Cabin Creek and Forest Service Road 486~~ black bears, and wolves in seasons set by Idaho Fish and Game Commission proclamation. ~~(3-15-02)~~()
- b. With any bait including grain, salt in any form (liquid or solid), or any other substance (not to include liquid scent) to constitute an attraction or enticement, with the exception of applicable rules for the black bear baiting permit. See Rules of the Idaho Fish and Game Commission, IDAPA 13.01.17, "Rules Governing the Use of Bait for Taking Big Game Animals." (3-30-01)
- c. With dogs, EXCEPT for mountain lion or black bear. See Rules of the Idaho Fish

and Game Commission, IDAPA 13.01.15, “Rules Governing the Use of Dogs.” (7-1-93)

d. With any net, snare, trap, chemical, deadfall or device other than legal firearm, archery or muzzleloader equipment; EXCEPT wolves may be trapped or snared in seasons set by Idaho Fish and Game Commission proclamation and subject to all trapping rules in IDAPA 13.01.16 “The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals.” ~~(7-1-93)~~()

e. Within an enclosure designed to prevent ingress or egress of big game animals, including fenced facilities defined as Domestic Cervidae Farms under Section 25-3501, Idaho Code, unless authorized by the director. This rule shall not apply to domestic cervidae which are lawfully privately owned elk, fallow deer, or reindeer. (4-6-05)

f. With radio telemetry or other electronic tracking devices used as an aid to locate big game animals. This rule does not affect the use of telemetry equipment on hounds or other sporting dogs. ()

(BREAK IN CONTINUITY OF SECTIONS)

412. MOTORIZED VEHICLE USE RESTRICTION UNITS.

The motorized vehicle use restriction applies to areas and hunts in units 29, 30, 30A, 32, 32A, 36A, 37, 37A, 39, 45, 47, ~~48~~, 49, 50, 51, 52, 53, 56, ~~57~~, 58, 59, 59A, 66, 66A, 69, 70, 72 (late season), 73, 75, 76, 77, and 78. The specific hunts and areas with a motorized vehicle use restriction are identified in the Commission’s Big Game Season Proclamation, which is published in a brochure available at department offices and license vendors. ~~(3-29-10)~~()

413. -- 419. (RESERVED).

420. MANDATORY CHECK AND REPORT REQUIREMENTS.

Any hunter killing black bear, moose, bighorn sheep or mountain goat, or mountain lion in a unit with no female lion quota must, WITHIN TEN (10) DAYS OF THE DATE OF KILL, or any hunter killing mountain lion in a unit with a female quota must, WITHIN FIVE (5) DAYS OF THE DATE OF KILL, or any hunter killing a gray wolf must, WITHIN ~~FIVE TEN~~ (~~5~~10) DAYS OF THE DATE OF KILL, comply with the mandatory check and report requirements by: ~~(3-29-10)~~()

01. Harvest Report. Completing the relevant harvest report (big game mortality report or other report form as required) for the species taken. (4-6-05)

02. Presentation of Animal Parts. Presenting the following animal parts so that Department personnel may collect biological data and mark the animal parts: (7-1-93)

a. Bear: Skull and hide to be presented to a conservation officer, regional office or official check point for removal and retention of premolar tooth and to have the hide marked. No person, who does not possess a fur buyer or taxidermist license and/or appropriate import

documentation, shall have in possession, except during the open season and for ten (10) days after the close of the season, any raw black bear pelt which does not have an official state export tag attached (either Idaho's or another state's official export documentation). (3-29-10)

b. Mountain Lion: Skull and hide to be presented to a conservation officer or regional office to have the hide marked. No person, who does not possess a fur buyer or taxidermist license and/or appropriate import documentation, shall have in possession, except during the open season and for five (5) days after the close of the season, any raw mountain lion pelt which does not have an official state export tag attached (either Idaho's or another state's official export documentation). (3-29-10)

c. Gray Wolf: Skull and hide to be presented to a conservation officer or regional office for removal and retention of a premolar tooth, and to have the hide marked. No person who does not possess a fur buyer or taxidermist license and/or appropriate import documentation shall have in possession, except during the open season and for ~~five ten~~ (510) days after the close of the season, any raw gray wolf pelt that does not have an official state export tag attached (either Idaho's or another state's official export documentation). (~~3-29-10~~)()

d. Moose: Antlers from antlered animals to be presented to a conservation officer or regional office. (7-1-93)

e. Bighorn Sheep: Ram horns to be presented to a regional office for marking, ewe horns to be presented to a regional office. (7-1-93)

f. Mountain Goat: Horns to be presented to a conservation officer or regional office. (7-1-93)

03. Authorized Representative. A hunter may authorize another person to comply with the above requirements if that person complies with reporting requirements and possesses enough information to accurately complete the necessary form. (7-1-93)

421. MANDATORY DEER AND ELK REPORT REQUIREMENTS.

01. Mandatory Report Form. After an ~~an~~ antelope pronghorn, deer and/or elk is killed, the hunter must accurately complete a Mandatory Report as provided by the Director. (~~3-15-02~~)()

02. Mandatory Report. Any hunter that obtains an ~~an~~ antelope pronghorn, deer and/or elk tag and kills an ~~an~~ antelope pronghorn, deer and/or elk, must submit a completed Mandatory Report to the Department or authorized agent, WITHIN TEN (10) DAYS OF KILL. ~~a~~Any hunter that obtains an ~~an~~ antelope pronghorn, deer and/or elk tag and does not successfully kill an ~~an~~ antelope pronghorn, deer and/or elk must submit a completed Mandatory Report Form to the Department or authorized agent WITHIN TEN (10) DAYS OF THE CLOSING DATE OF THE APPROPRIATE SEASON. (~~3-15-02~~)()

03. Failure to Report. Failure to submit the required antelope pronghorn, deer and/or elk Mandatory Report by January 31 of the following year as required in Subsection 421.02 will render the hunter ineligible to obtain any subsequent year's license until a late Mandatory Report

permit is filed with the Department or authorized agent. ~~To be effective December 31, 2003.~~
(3-20-04)()

04. Drawing for “Super” Tag. All successful and unsuccessful ~~antelope pronghorn~~, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) “Super” controlled ~~antelope pronghorn~~/deer/elk tags. Each hunter drawn for a “Super” controlled ~~antelope pronghorn~~/deer/elk hunt must notify the Department by May 1 of which species they have selected to hunt. The “Super” controlled hunt tag is valid for the selected species and allows the hunter to hunt in any open general and/or controlled hunt for the selected species in the following season. (3-15-02)()

422. MANDATORY WOLF TELEPHONE REPORT.

In addition to other check and reporting requirements, any hunter killing a gray wolf must report the harvest within ~~twenty-four~~ ~~seventy-two~~ (24/72) hours by calling the Wolf Reporting Number, a toll-free telephone number published in the gray wolf season brochure available at Department offices and license vendors. (3-29-10)()

(BREAK IN CONTINUITY OF SECTIONS)

605. ELK ZONE DESCRIPTIONS.

- 01. Panhandle Zone.** All of Units 1, 2, 3, 4, 4A, 5, 6, 7, and 9. (7-1-99)
- 02. Palouse Zone.** All of Units 8, 8A, and 11A. (7-1-99)
- 03. Dworshak Zone.** All of Unit 10A. (7-1-99)
- 04. Hells Canyon Zone.** All of Units 11, 13, and 18. (7-1-99)
- 05. Lolo Zone.** All of Units 10 and 12. (7-1-99)
- 06. Elk City Zone.** All of Units 14, 15, and 16. (7-1-99)
- 07. Selway Zone.** All of Units 16A, 17, 19, and 20. (7-1-99)
- 08. Middle Fork Zone.** All of Units 20A, 26, and 36B. (7-1-99)
- 09. Salmon Zone.** All of Units 21, 21A, 27, and 28. (4-5-00)
- 10. Weiser River Zone.** All of Units 22, 32, and 32A. (4-5-00)
- 11. McCall Zone.** All of Units 19A, 23, 24, and 25. (7-1-99)
- 12. Lemhi Zone.** All of Units 29, 37, 37A, and 51. (7-1-99)

13. **Beaverhead Zone.** All of Units 30, 30A, 58, 59, and 59A. (7-1-99)
14. **Brownlee Zone.** All of Unit 31. (7-1-99)
15. **Sawtooth Zone.** All of Units 33, 34, 35, and 36. (7-1-99)
16. **Pioneer Zone.** All of Units 36A, 49, and 50. (7-1-99)
17. **Owyhee-South Hill Zone.** All of Units 38, 40, 41, 42, 46, 47, 54, 55, and 57. (4-5-00)
18. **Boise River Zone.** All of Unit 39. (7-1-99)
19. **Smoky Mountains Zone.** All of Units 43, 44, and 48. (3-15-02)
20. **Bennett Hills Zone.** All of Units 45 and 52. (7-1-99)
21. **Big Desert Zone.** All of Units 52A, ~~53, 63, 63A,~~ and 68, ~~and 68A.~~ ~~(7-1-99)~~()
22. **Island Park Zone.** All of Units 60, 60A, 61, and 62A. (7-1-99)
23. **Teton Zone.** All of Units 62 and 65. (7-1-99)
24. **Palisades Zone.** All of Units 64 and 67. (7-1-99)
25. **Tex Creek Zone.** All of Units 66 and 69. (7-1-99)
26. **Bannock Zone.** All of Units 56, 70, 71, 72, 73, 73A, and 74. (7-1-99)
27. **Bear River Zone.** All of Units 75, 77, and 78. (7-1-99)
28. **Diamond Creek Zone.** All of Units 66A and 76. (7-1-99)
29. **Snake River Zone.** All of Units 53, 63, 63A, and 68A. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

703. CONTROLLED HUNT AREA DESCRIPTIONS -- ANTELOPE PRONGHORN.
Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation.
The proclamation is published in a brochure available at Department offices and license vendors.
~~(4-2-08)~~()

(BREAK IN CONTINUITY OF SECTIONS)

800. EMERGENCY DEPREDATION HUNTS.

01. Eligibility. (7-1-93)

a. Only Idaho residents with a valid Idaho hunting or combination license are eligible to apply to participate in emergency depredation hunts. (7-1-93)

b. Persons submitting applications for emergency depredation hunts are eligible to apply for controlled hunts or may hunt in the general season. (7-1-93)

02. Applications. (7-1-93)

a. Applicants must submit a depredation hunt application and mail it to the regional office of the Idaho Department of Fish and Game in the area(s) they are willing to hunt. Applicants may apply to different areas for deer, elk, ~~and antelope~~ pronghorn, black bear, or gray wolf. (7-1-93)()

b. Applicants may submit only one (1) application per year for each species. An individual or a group may apply on an application. A group is defined as two (2) hunters applying for the same depredation hunt on the same application. On a group application both hunters must comply with all regulations, complete the application properly, and abide by the same depredation hunt choice. If an individual submits application for more than one (1) species, he does not have to be in the same group for each application Separate applications may be submitted for deer, elk, ~~and antelope~~ pronghorn, black bear, or gray wolf. (7-1-93)()

c. Application can be made in only one (1) region for deer, one (1) for elk, ~~and~~ one (1) for ~~antelope~~ pronghorn, one (1) for black bear, and one (1) for gray wolf. (7-1-93)()

d. Any form not properly completed will be ineligible for selection. (7-1-93)

e. Any holder of an antlerless or doe/fawn, ~~or black bear~~ controlled hunt ~~permit~~/tag will be considered an applicant for any depredation hunt for that species which is: (7-1-93)()

i. Held prior to the antlerless or doe/fawn, ~~or black bear~~ controlled hunt; and (7-1-93)()

ii. Is in the same area as the depredation. (7-1-93)

f. Any holder of an antlerless or doe/fawn, ~~or black bear~~ controlled hunt ~~permit~~/tag may also apply for a depredation hunt in any region. (7-1-93)()

g. A list of depredation hunt applications received will be maintained for the time period July 1 to June 30. Applications are valid only for the time period for which they are submitted. (7-1-93)

h. Military personnel returning from active duty after June 30 may apply at any time and will be given priority in the selection process. (4-11-06)

03. Selection of Participants. The Department shall place all applications (individual or group) for each depredation hunt received by June 30 in random order. All applications received after June 30 shall be placed at the end of the list in the order received, except that military personnel returning from active duty will be given priority. The Department shall select participants for a hunt in the order in which applicants appear on the list EXCEPT for those hunts which precede, or at the discretion of the Regional Supervisor, follow a controlled hunt for doe/fawn or antlerless animals **or black bear**. If a depredation hunt is scheduled before or at the discretion of the Regional Supervisor **after** a doe/fawn or antlerless hunt **or black bear hunt** in the same unit, the holders of the doe/fawn or antlerless ~~permit~~tags **or black bear tag** will be given the option to hunt in the depredation hunt. If no doe/fawn or antlerless **or black bear** hunts are scheduled in that unit, or if some depredation hunt ~~permits~~ tags are not taken by controlled hunt ~~permitted~~ **hunters**, participants will be selected from applicants for that depredation hunt. If a group application is selected, both hunters will be offered depredation hunt ~~permits~~ tags. (4-11-06)()

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b), and 36-1101, Idaho Code.

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

Some hunters have questioned whether shooting upland game birds from watercraft is an ethical method of take, and have requested Commission action to prohibit the take of upland game birds from any watercraft.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [September 1, 2010 Idaho Administrative Bulletin, Vol. 10-9, pages 66 and 67.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact W. Dallas Burkhalter (208) 334-3715.

DATED this 9th day of November, 2010.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2010.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a proposed rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Some hunters have questioned whether shooting upland game birds from watercraft is an ethical method of take, and have requested Commission action to prohibit the take of upland game birds from any watercraft.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the lack of an identified group to represent interested persons makes it infeasible.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 29th day of July, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0109-1001

300. UPLAND GAME BIRD METHODS OF TAKE.

01. Taking of Upland Game Birds. No person shall take upland game birds: (7-1-93)

a. Except wild turkey, from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise. Pheasants shall not be taken before twelve o'clock noon on the opening day in certain counties (see Rule 11, Pheasant Seasons). Wild turkey shall not be taken between sunset and one-half (1/2) hour before sunrise. ~~Pheasants~~ Upland game birds shall not be taken before 10 a.m. ~~after the opening day~~ during the pheasant season on the Fort Boise, Montour, Payette River and C.J. Strike Wildlife Management Areas. (4-6-05)()

b. With a trap, snare, net, crossbow, or firearms EXCEPT a shotgun using shells not exceeding three and one-half (3-1/2) inches maximum length, slingshot, hand-held or thrown missiles, EXCEPT forest grouse. Forest grouse shall not be taken with a trap, snare, net, or crossbow. (3-30-01)

c. From ~~boats or other craft having a motor attached UNLESS the motor is completely shut off and forward progress has ceased, or if the boat is drifting naturally, or if it is propelled only by paddle, oars, or pole, or if it is beached, moored, or resting at anchor~~ any watercraft. (7-1-93)()

d. By the use or aid of any electronic call. (7-1-93)

e. By the aid of baiting. Bait is defined as any substance placed to attract upland game birds. (7-1-93)

f. When hunting on Wildlife Management Areas where pheasants are stocked without wearing at least thirty-six (36) square inches of visible hunter orange above the waist. (5-8-09)

02. Wild Turkey. In addition to the methods listed above, wild turkey may not be taken: (7-1-93)

a. With lead shot exceeding BB size. (7-1-93)

b. With steel shot exceeding T size. (7-1-93)

c. By the use of dogs, except during fall hunts. (3-30-01)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1002

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b), 36-404, 36-406, 36-407 and 36-1101, Idaho Code.

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

Implement Senate Bill 1285 which allows nine year old hunters to apply for controlled hunt turkey permits.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [September 1, 2010 Idaho Administrative Bulletin, Vol. 10-9, pages 68 through 70.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact W. Dallas Burkhalter (208) 334-3715.

DATED this 9th day of November, 2010.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **July 12, 2010**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b), 36-404, 36-406, 36-407 and 36-1101, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2010.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Implement Senate Bill 1285 which allows nine-year old hunters to apply for controlled hunt turkey permits.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The temporary rule confers a benefit to certain hunters, and complies with amendment to Sections 36-404, 36-406, and 36-407, Idaho Code.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with the statutory amendment.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 29th day of July, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0109-1002

100. TAGS, STAMPS, PERMITS, AND VALIDATIONS.

01. Sage Grouse or Sharp-Tailed Grouse. No person shall hunt sage or sharp-tailed grouse anywhere within the state, except licensed shooting preserves, without having in his or her possession the appropriate hunting license that has been validated for sage grouse and sharp-tailed grouse. The validation shall be valid from January 1 through December 31 of each year. (5-8-09)

02. Migratory Game Birds. No person shall hunt ducks, geese, brant, coots, common snipe, sandhill cranes, or mourning doves anywhere within the state, without having in his or her possession the appropriate hunting license that has been validated for the Federal Migratory Game Bird Harvest Information Program. The validation shall be valid from January 1 through December 31 of each year. (7-1-98)

03. Wild Turkey. No person shall hunt wild turkey without having in his or her possession the appropriate hunting license, tag, and controlled hunt permit. Persons obtaining and using tags, stamps, and permits must comply with the following requirements: (7-1-98)

a. There are three (3) turkey tags available each calendar year. These are the general tag, extra tag, and special unit tag. Only three (3) turkey tags of the following may be purchased each year; general and extra. In addition to the previously mentioned three (3) turkey tags, three (3) special unit tags may also be purchased. A hunter may not obtain both a spring general and a spring controlled turkey tag during the spring. (5-8-09)

b. Permits for Controlled Hunts: Any person who receives a controlled hunt permit for wild turkey is prohibited from using that permit/tag to hunt in any other wild turkey hunt. (4-5-00)

c. Nonresident permit limitations: On controlled hunts with ten (10) or fewer permits, not more than one (1) permit will be issued to nonresidents. On controlled hunts with more than ten (10) permits, not more than ten percent (10%) of the permits may be issued to nonresidents.

(7-1-98)

d. Eligibility: The holders of valid hunting licenses are eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

i. Holders of a Type 208 Nongame Hunting License may not apply for any controlled hunt. (7-1-93)

ii. In the event a permit is issued based on erroneous information, the permit will be invalidated and the person will remain on the drawn list. (7-1-93)

e. Applications: Applications for spring and fall controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than February 15 for spring hunts and July 15 for fall hunts, annually. Applications must comply with the following requirements: (5-8-09)

i. Holders of a Duplicate License (Type 501) must use their original license number to apply for a controlled hunt. Duplicate license numbers will not be accepted. (7-1-93)

ii. Only one (1) application card per person or group will be accepted. Additional application cards will result in all applicants being declared ineligible. (7-1-93)

iii. Fees: All applicants for controlled hunts must submit a non-refundable application fee with their application; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. (5-8-09)

iv. A single payment (either cashier's check, money order, certified check, or personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. (2-7-95)

v. A "group application" is defined as two (2) hunters applying for the same controlled hunt on the same application. (2-7-95)

vi. Hunting license and tag fees will NOT be refunded to unsuccessful applicants. (7-1-93)

vii. All spring wild turkey hunters may apply for a Fall turkey controlled hunt permit during the same calendar year. (3-30-01)

f. Drawing information: Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing provided the second choice hunt applied for has not been filled. (7-1-93)

g. Tag validation and attachment: Immediately after any wild turkey is killed, the turkey tag must be validated and securely attached to the wild turkey. (7-1-93)

h. To validate the tag, the hunter must cut out and completely remove two (2)

triangles on the border of the tag, one (1) for the month and one (1) for the day of the kill.

(7-1-93)

i. The tag must remain attached so long as the turkey is in transit or storage. (7-1-93)

j. The Commission establishes youth-only controlled hunts by proclamation. Only hunters ~~twelve~~ nine (~~12~~9) to ~~seventeen~~ fifteen (~~17~~15) years of age with a valid license may apply for youth-only controlled hunts, provided they are ten (10) to fifteen (15) years of age during the hunt for which they are applying, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth-only controlled hunt permits. Hunters nine (9) years of age with a valid license may apply for regular controlled hunts provided they are ten (10) years of age during the hunt for which they are applying. (~~3-29-10~~)()

04. Early September Canada Goose Hunts. (7-1-98)

a. Controlled Hunts: No person shall hunt Canada geese during controlled, early September seasons (September 1-15) without having in his or her possession the appropriate hunting license and controlled hunt permit. Persons obtaining and using controlled hunt permits must comply with the following requirements: (7-1-98)

i. Applications: Applications for controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than July 15, annually. Applications must comply with the following requirements: (4-5-00)

ii. Fees: All applicants for controlled hunts must submit a nonrefundable application fee with their application; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. Successful applicants will be issued a permit that entitles them to hunt. The Federal Migratory Bird Stamp is required by any person seventeen (17) years of age and older, respectively (Title 50 Code of Federal Regulations, Part 20). (3-30-01)

iii. The following rules previously established for wild turkey also apply to early September Canada goose hunts: Subsections 100.03.b., 100.03.c., 100.03.d., 100.03.e.ii., 100.03.e.iv. through 100.03.e.vi., and 100.03.f. (3-30-01)

iv. Any controlled hunt permits for Canada geese that remain unsold after the controlled hunt drawing may be sold by the Department on a first-come, first-served basis. (7-1-98)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

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

DOCKET NO. 13-0110-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-103, 36-104(b), 36-501, 36-502, 36-504, and 36-603 Idaho Code.

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

Implement Senate Bill 1328 which allows the release of certain captured predatory and unprotected wildlife with written landowner permission. Senate Bill 1342 allows the Department to require records from taxidermy/furbuyers and adds a reporting requirement for purchase of raw mountain lion and black bear parts. Clarify legal methods of take and address commercial sale of rattlesnake parts.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [September 1, 2010 Idaho Administrative Bulletin, Vol. 10-9, pages 71 through 74.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact W. Dallas Burkhalter (208) 334-3715.

DATED this 9th day of November, 2010.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **July 12, 2010**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-103, 36-104(b), 36-501, 36-502, 36-504, and 36-603, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2010.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Implement Senate Bill 1328 which allows the release of certain captured predatory and unprotected wildlife with written landowner permission. Senate Bill 1342 allows the Department to require records from taxidermy/furbuyers and adds a reporting requirement for purchase of raw mountain lion and black bear parts. Clarify legal methods of take and address commercial sale of rattlesnake parts.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The temporary rule confers a benefit to certain hunters, and complies with amendment to Idaho Code Section 36-502.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated

rulemaking was not conducted because of the need to comply with the statutory amendment.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 29th day of July, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0110-1001

100. PERMITS, REQUIREMENTS FOR IMPORT, EXPORT, TRANSPORT, RELEASE, AND SALE.

No person shall import, export, transport into or cause to be transported within, release or sell within the state of Idaho any living wildlife including wildlife eggs without having first obtained a permit from, and on a form prescribed by, the Director of the Idaho Department of Fish and Game. However, no permit shall be issued by the Director for such importation, transportation or release or sale if the wildlife or eggs thereof would pose a threat to wildlife in the state of Idaho either through threat of disease, genetic contamination or displacement of, or competition with existing species and provided that: (3-23-94)()

01. Import, Export, Transport, or Sell Restrictions. No permit shall be required from the Department of Fish and Game to import, export, transport or sell the following: (3-23-94)

a. Animals or their eggs normally considered to be of agricultural or domestic types currently common to Idaho which shall not include any wildlife. (3-23-94)

b. Mammals classified as furbearers by the Idaho Fish and Game Commission, and that are to be used for purposes provided for in Chapter 30 of Title 25, Idaho Code. (3-23-94)

c. Ornamental or tropical aquarium fish of varieties commonly accepted for interstate shipment, but not including green sturgeon (*Acipenser medirostris*), white sturgeon (*Acipenser transmontanus*), walking catfish (family *Claridae*), bowfin (*Amia calva*), gar (family *Lepiostidae*), piranhas (*Serrasalmus* sp., *Rosseveltiella* sp. *Pygocentrus* sp.), rudd (*Scardinius erythrophthalmus*), Ide (*Leuciscus idus*), grass carp (*Ctenopharyngodon idella*), and snakeheads or china fish

(Channa sp.). (3-23-94)

d. Animals commonly considered to be conventional household pets, including sugar glider (*Petaurus breviceps*) and African hedgehog (*Atelerix albiventris*). (7-1-99)

e. Birds classified as game birds that are produced in captivity and lawfully obtained as shown by proof maintained and presented in accordance with Section 36-709 Idaho Code. (3-23-94)

02. Fish Legally Taken. No permit shall be required to keep game fish legally taken, other than salmon or steelhead, alive and in possession in a live well or net or on a stringer in or on the body of water from which they were taken. (7-1-93)

03. Commercial Fish Facility. No permit shall be required to possess fish from a commercial fish facility when accompanied by sales receipt as provided in Chapter 46, Title 22, Idaho Code. (7-1-93)

04. Transport Between Commercial Fish Facilities. No permit shall be required to transport fish between properly licensed commercial fish facilities. (3-23-94)

05. Fish Eggs. No permit shall be required to possess, sell, purchase or transport nonviable fish eggs used for bait or personal consumption. (3-23-94)

06. Wildlife. No wildlife except wildlife classified as unprotected, ~~or~~ predatory, native amphibian or native reptile as defined in IDAPA 13.01.06, "Classification and Protection of Wildlife," Subsections 200.03, 200.04, and Sections 201 and 250, may be taken from the wild in the state of Idaho and kept alive in captivity unless authorized by the Commission or in writing by the Director or his designee, and may require a permit from the Idaho Department of Agriculture/USDA APHIS. (~~7-1-99~~)()

a. No wildlife may be taken alive from state parks, national parks and monuments, wildlife management areas or nature preserves except as designated by the Commission or permitted in writing by the Director and permitted in writing by the responsible land management agency. (3-23-94)

b. No person shall capture alive, ~~or~~ hold in captivity, kill, or possess at any time more than four (4) Idaho native reptiles or amphibians of any one (1) species except as authorized by Commission Rule or permitted in writing by the Director. (~~3-23-94~~)()

07. Birds of Prey. No additional permit shall be required to import, possess, transport or export legally possessed birds of prey in accordance with Idaho falconry rules IDAPA 13.01.14, "Rules Governing Falconry in the State of Idaho," by properly licensed falconers. (3-23-94)

08. Unprotected Wildlife. No permit shall be required to sell, export or transport within Idaho, any legally taken species of wildlife classified as unprotected by commission rule. Unprotected native wildlife may be released in accordance with Section 36-502 (c) Idaho Code. The written landowner consent required by Idaho Code shall be in possession while such wildlife

are in transit to the release site.

~~(3-23-94)~~()

09. Possession of Wildlife. The possession of any wildlife, progeny or eggs thereof imported into this state without a valid import permit, if such permit is required, shall be unlawful. (3-23-94)

10. Predatory Wildlife. Predatory native wildlife may be released in accordance with Section 36-502(c) Idaho Code. The written landowner consent required by Idaho Code shall be in possession while such wildlife are in transit to the release site. ()

(BREAK IN CONTINUITY OF SECTIONS)

300. RECOVERY, POSSESSION AND SALE OF WILDLIFE PARTS.

01. Wildlife Legally Killed. (3-23-94)

a. The possession, sale and purchase of wildlife or parts of wildlife that have been legally killed is lawful except as provided below and as provided in Chapter 5, Title 36, Idaho Code. (3-23-94)

i. The edible flesh of wildlife classified as big game animals, upland game animals, game birds, ~~or~~ migratory birds, or rattlesnakes taken from the wild may not be purchased, bartered or sold. ~~(3-23-94)~~()

ii. The edible flesh of wildlife classified as game fish or crustacea that are taken from the wild may not be purchased, bartered or sold except as provided in Idaho Code Sections 36-501 and 36-801 through 36-805 and rules promulgated pursuant thereto. (3-23-94)

iii. The annual sale by holders of a valid Idaho hunting, trapping or combination hunting and fishing license of up to six (6) skins of legally taken rattlesnakes is lawful pursuant to IDAPA 13.01.06, "Classification and Protection of Wildlife", Subsection 300.02 and Subsection 100.06 of this rule. ()

b. A written statement showing the taker's name, address, license and tag numbers, date and location of kill, signed by the taker, must be provided to the buyer of any black bear or mountain lion head, hide or parts (except tanned hides finished into rugs or mounts). A copy of the sales statement must be forwarded by the buyer to the Idaho Department of Fish and Game within ten (10) days after such sale. A department CE-50, Statement of Sale/Purchase of Wildlife Parts, may be used in lieu of a sales statement. ~~(3-23-94)~~()

c. Persons possessing a taxidermist or fur buyer license shall keep a record for two (2) years from the date the wildlife was received for mounting or preservation, furbearers purchased and raw black bear skins, raw mountain lion skins or parts of black bears or mountain lions purchased. Records may be written or retained on media other than paper and must comply with standards set forth in Section 9-328, Idaho Code. Copies of sales statements as per

Subsection 300.01.b. satisfy provisions of this rule. ()

02. Animals Found Dead. Protected species of wildlife that have died naturally or accidentally remain in public trust to be disposed of by the Department of Fish and Game. However, a person may recover, possess, sell or purchase the wildlife parts as specified below, but **ONLY** under the conditions specified and **ONLY** if the wildlife has **NOT** been unlawfully killed. Natural causes shall not include any man-caused mortality. (7-1-98)

a. Horns of Bighorn Sheep. (7-1-93)

i. Bighorn sheep horns of animals that have died of natural causes may be recovered and possessed but may not be sold, bartered or purchased and may not be transferred to another person without a permit issued by the Director. All such pickup horns must be presented to an Idaho Department of Fish and Game regional or subregional office for marking by placement of a permanent metal pin in the horn within thirty (30) days of recovery. The insertion of a pin does not in itself certify that the animal was legally taken or possessed. The pin only identifies the horn(s) and indicates that mandatory check and report requirements were complied with.. (3-23-94)

ii. No person shall alter, deface or remove a pin placed in a bighorn sheep horn by the Idaho Department of Fish and Game. No person shall possess the horn(s) of a bighorn sheep that bears an altered, defaced or counterfeit Idaho pin or from which the Idaho pin has been removed. (3-23-94)

b. Antlers, bones, and horns of deer, elk, moose, pronghorn and mountain goat, parts of bear and mountain lion and elk teeth of animals that have died of natural causes may be recovered, possessed, purchased, bartered or sold. Reporting of bear and mountain lion parts is required pursuant to Subsection 300.01, of this rule. (~~3-29-10~~)()

03. Wildlife Taken in Other States. Wildlife or parts thereof that have been legally taken outside of Idaho, may be possessed or sold in Idaho if such sale is not prohibited in Idaho or the state, province or country where taken, or by federal law or regulation; (3-23-94)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

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

DOCKET NO. 13-0116-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b), 36-201 and 36-1101, Idaho Code.

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

Implement Senate Bill 1286 which classifies raccoons as predatory wildlife, and clarify the definitions of bait and ‘game animal.’

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [September 1, 2010 Idaho Administrative Bulletin, Vol. 10-9, pages 75 through 77.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact W. Dallas Burkhalter (208) 334-3715.

DATED this 9th day of November, 2010.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **July 12, 2010**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b), 36-201 and 36-1101, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2010.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Implement Senate Bill 1286 which classifies raccoons as predatory wildlife, and clarify the definitions of “bait” and “game animal.”

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The temporary rule confers a benefit to certain hunters, and complies with amendment to Section 36-201, Idaho Code.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with the statutory amendment.

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

this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 29th day of July, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0116-1001

010. DEFINITIONS.

- 01. Furbearing Animals.** Furbearing animals are defined as the following species: (7-1-93)
- a. Marten -- *Martes americana*. (7-1-93)
 - b. Fisher -- *Martes pennanti*. (7-1-93)
 - c. Mink -- *Mustela vison*. (7-1-93)
 - d. Otter -- *Lontra canadensis*. (3-30-01)
 - e. Beaver -- *Castor canadensis*. (7-1-93)
 - f. Muskrat -- *Ondatra zibethicus*. (7-1-93)
 - g. Bobcat -- *Felis rufus*. (7-1-93)
 - h. Lynx -- *Felis lynx*. (7-1-93)
 - i. Red Fox -- *Vulpes vulpes*, and includes all color phases found in Idaho. (7-1-93)
 - ~~j. Raccoon -- *Procyon lotor*. (7-1-93)~~
 - ~~k. Badger -- *Taxidea taxus*. (7-1-93)~~
- 02. Predatory Wildlife.** Predatory wildlife is defined as the following species: (7-1-93)

- a. Coyote. (7-1-93)
- b. Jackrabbit. (7-1-93)
- ~~c.~~ Raccoon ()
- ~~d.~~ Skunk. (7-1-93)
- ~~e.~~ Weasel. (7-1-93)

03. Unprotected Wildlife. Unprotected wildlife is defined as all animals OTHER than those classified by the Fish and Game Commission as **big** game animals, upland game animals, game birds, game fish, crustacea, migratory birds, furbearing animals, threatened or endangered wildlife, protected nongame wildlife or predatory wildlife. ~~(7-1-93)~~()

04. Bait. Bait is defined as any animal parts; except bleached bones or liquid scent. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

400. METHODS OF TAKE.

01. Furbearing Animals. No person shall take beaver, muskrat, mink, marten, or otter by any method other than trapping. In Valley County and portions of Adams County in the Little Salmon River drainage, red fox may be taken only by trapping. (5-3-03)

02. Hunting. No person hunting permissible furbearing animals or predatory or unprotected wildlife shall: (7-1-93)

a. Hunt with any weapon the possession of which is prohibited by state or federal law. (7-1-93)

b. Hunt with dogs unless they comply with IDAPA 13.01.15, "Rules Governing the Use of Dogs." (7-1-93)

c. Hunt any furbearing animal, ~~except raccoon,~~ with or by the aid of artificial light. ~~(7-1-93)~~()

d. Persons may hunt raccoon with the aid of an artificial light without a permit from the Director but ~~no~~ person hunting raccoon at night shall: ~~(7-1-93)~~()

i. Hunt from a motorized vehicle. (7-1-93)

ii. Use any light attached to any motor vehicle. (7-1-93)

iii. Hunt on private land without obtaining written permission from the landowner or lessee. (7-1-93)

03. Trapping. No person trapping furbearing animals or predatory or unprotected wildlife shall: (7-1-93)

a. Use for bait or scent, any part of a domestic or wild origin game bird, **big** game animal, **upland game animal**, game fish, or protected nongame wildlife. ~~(4-6-05)~~()

b. Use any set within thirty (30) feet of any visible bait. (4-6-05)

c. Use a dirt hole set with bait unless the person ensures that the bait remains covered at all times to protect raptors and other meat-eating birds from being caught accidentally. (7-1-93)

d. Use live animals as a bait or attractant. (4-6-05)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

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

DOCKET NO. 13-0116-1002

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b), 36-201, and 36-1101, Idaho Code.

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

Public concern over the placement of traps and snares near public travel ways and injury to pets. Establish rules for placement of traps and snares near public travel ways.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 233 through 236.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact W. Dallas Burkhalter (208) 334-3715.

DATED this 9th day of November, 2010.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

THIS NOTICE PUBLISHED WITH THE PROPOSED AND TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 16, 2010.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b), 36-201 and 36-1101, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Public concern over the placement of traps and snares near public travel ways and injury to pets. Establish rules for placement of traps and snares near public travel ways.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The temporary rule confers a benefit to certain hunters and trappers.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the lack of an identified group to represent interested parties makes it infeasible. The rules were reviewed with the Idaho Trapper's Association.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0116-1002

010. DEFINITIONS.

- 01. Furbearing Animals.** Furbearing animals are defined as the following species: (7-1-93)
- a. Marten -- *Martes americana*. (7-1-93)
 - b. Fisher -- *Martes pennanti*. (7-1-93)
 - c. Mink -- *Mustela vison*. (7-1-93)
 - d. Otter -- *Lontra canadensis*. (3-30-01)
 - e. Beaver -- *Castor canadensis*. (7-1-93)
 - f. Muskrat -- *Ondatra zibethicus*. (7-1-93)
 - g. Bobcat -- *Felis rufus*. (7-1-93)
 - h. Lynx -- *Felis lynx*. (7-1-93)
 - i. Red Fox -- *Vulpes vulpes*, and includes all color phases found in Idaho. (7-1-93)
 - j. Badger -- *Taxidea taxus*. (7-1-93)
- 02. Predatory Wildlife.** Predatory wildlife is defined as the following species: (7-1-93)
- a. Coyote. (7-1-93)

- b. Jackrabbit. (7-1-93)
- c. Raccoon (7-12-10)T
- d. Skunk. (7-1-93)
- e. Weasel. (7-1-93)

03. Unprotected Wildlife. Unprotected wildlife is defined as all animals OTHER than those classified by the Fish and Game Commission as big game animals, upland game animals, game birds, game fish, crustacea, migratory birds, furbearing animals, threatened or endangered wildlife, protected nongame wildlife or predatory wildlife. (7-12-10)T

04. Bait. Bait is defined as any animal parts; except bleached bones or liquid scent. (4-6-05)

05. Sets. ()

a. Ground Set. Ground set is defined as any foothold trap, body-gripping trap, or snare originally set in or on the land (soil, rock, etc.). This includes any traps elevated up to a maximum of thirty-six (36) inches above the natural ground level. ()

b. Water Set. Water set is defined as any trap or snare originally set in or on any body of water. This shall include traps on floats in the water and those that are set with a minimum of one-third (1/3) of the trap submerged. The term water set applies to traps set on beaver dams, in bank holes and in the water at bank slides. ()

c. Other Sets. Other set is defined as any set not defined as a ground or water set, including without limitation, elevated sets originally set thirty-six (36) inches or more above natural ground level. ()

06. Public Trail. Public trail is defined as any trail designated by any city, county, state, or federal transportation or land management agency on the most current official map of the agency. ()

(BREAK IN CONTINUITY OF SECTIONS)

400. METHODS OF TAKE.

01. Furbearing Animals. No person shall take beaver, muskrat, mink, marten, or otter by any method other than trapping. In Valley County and portions of Adams County in the Little Salmon River drainage, red fox may be taken only by trapping. (5-3-03)

02. Hunting. No person hunting permissible furbearing animals or predatory or unprotected wildlife shall: (7-1-93)

- a. Hunt with any weapon the possession of which is prohibited by state or federal law. (7-1-93)
- b. Hunt with dogs unless they comply with IDAPA 13.01.15, "Rules Governing the Use of Dogs." (7-1-93)
- c. Hunt any furbearing animal with or by the aid of artificial light. (7-12-10)T
- d. Persons may hunt raccoon with the aid of an artificial light without a permit from the Director but no person hunting raccoon at night shall: (7-12-10)T
- i. Hunt from a motorized vehicle. (7-1-93)
- ii. Use any light attached to any motor vehicle. (7-1-93)
- iii. Hunt on private land without obtaining written permission from the landowner or lessee. (7-1-93)
- 03. Trapping.** No person trapping furbearing animals or predatory or unprotected wildlife shall: (7-1-93)
- a. Use for bait or scent, any part of a domestic or wild origin game bird, big game animal, upland game animal, game fish, or protected nongame wildlife. (7-12-10)T
- b. Use any set within thirty (30) feet of any visible bait. (4-6-05)
- c. Use a dirt hole **ground** set with bait unless the person ensures that the bait remains covered at all times to protect raptors and other meat-eating birds from being caught accidentally. ~~(7-1-93)~~()
- d. Use live animals as a bait or attractant. (4-6-05)
- e. Place any ground, water, or other sets on, across, or within five (5) feet of center line of any maintained public trail. ()
- f. Place any ground set on, across, or within any public highway as defined in Section 36-202, Idaho Code; except ground sets may be placed underneath bridges and within and at culverts that are part of a public highway right-of-way. ()
- g. Place any ground set incorporating snare, trap, or attached materials within three hundred (300) feet of any designated public campground, trailhead, or picnic area. ()
- h. Place or set any snare without a break-away device. ()

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.17 - RULES GOVERNING THE USE OF BAIT FOR TAKING BIG GAME ANIMALS

DOCKET NO. 13-0117-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b), and 36-1101, Idaho Code.

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

Clarify the definitions of bait and “game animals,” and allow incidental take of wolves near bear bait sites.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [September 1, 2010 Idaho Administrative Bulletin, Vol. 10-9, pages 78 and 79.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact W. Dallas Burkhalter (208) 334-3715.

DATED this 9th day of November, 2010.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **July 12, 2010**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2010.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Clarify the definitions of “bait” and “game animals,” and allow incidental take of wolves near bear bait sites.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The temporary rule confers a benefit to certain hunters.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the lack of an identified group to represent interested persons makes it infeasible.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 29th day of July, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0117-1001

100. USE OF BAIT.

Bait is defined as any substance placed to attract big game animals, except liquid scent for deer and elk. Bait may be used to hunt **ONLY** black bear and **ONLY** under the following conditions, **EXCEPT** wolves may be taken incidentally to bear baiting. (7-9-93)()

01. Time. (7-1-93)

a. No bait or bait container may be placed for the purpose of attracting or taking black bear prior to the opening of black bear take season **EXCEPT** in that portion of Unit 12 north of State Highway 12 southwest of the Doe Creek Road (Forest Service Road 566) and northeast of Cabin Creek and Forest Service Road 486, and bait may be placed one (1) week prior to the opening of bear season in Units 17, 19, 20, 20A, 26 and 27. (5-8-09)

b. All bait, bait containers and materials must be removed and all excavations refilled no later than seven (7) days after the close of each season; spring, fall, or black bear dog training. (5-8-09)

02. Location. (7-1-93)

a. No bait site may be located within two hundred (200) feet of any water (lake, pond, reservoir, year round free flowing spring and year round free flowing stream), or within two hundred (200) yards from any maintained trail or any road. (3-30-01)

b. No bait site may be located within one-half (1/2) mile of any designated campground or picnic area, administrative site, or dwelling. (7-1-93)

03. Types. (7-1-93)

a. No person shall use any part of a domestic or wild origin game bird, **big** game animal, upland game animal, game fish, or protected nongame wildlife for bait or scent.

~~(4-2-08)~~()

- b.** The skin must be removed from any mammal parts or carcasses used as bait. (7-1-93)
- c.** No person shall use salt in any form (liquid or solid) for bait. (3-29-10)
- 04. Containers.** (7-1-93)

 - a.** No bait may be contained within paper, plastic, glass, metal, wood or other nonbiodegradable materials, except that a single, metal container with a maximum size of fifty-five (55) gallons may be used if securely attached at the bait site. (7-1-93)
 - b.** No bait may be contained in any excavated hole greater than four (4) feet in diameter. (7-1-93)
- 05. Establishment of Bait Sites.** (7-1-93)

 - a.** Any structures constructed at bait sites using nails, spikes, ropes, screws, or other materials must be removed by the permit holder within seven (7) days after the close of each season; spring, fall, or black bear dog training. (3-29-10)
 - b.** All bait sites must be visibly marked at the nearest tree or on the bait container using a tag supplied by the Department. (7-1-93)

IDAPA 20 - DEPARTMENT OF LANDS

20.02.11 - TIMBER SUPPLY STABILIZATION ACT OF 1989 ON STATE FORESTS

DOCKET NO. 20-0211-1001 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized by Sections 58-104(6) and 58-105, Idaho Code.

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

The pending rule is being adopted as proposed. The notice of the temporary and proposed rule was published in the [October 6, 2010, Idaho Administrative Bulletin, Vol. 10-10, page 351.](#)

This rule is repealed in its entirety.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact the undersigned.

DATED this 19th day of November, 2010.

Bob Helmer
Bureau Chief, Forest Management
Idaho Department of Lands
3284 West Industrial Loop
Coeur d'Alene, Idaho 83815
(208) 666-8610
Fax No. (208) 769-1524

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Department of Lands has proposed rulemaking. The action is authorized by Sections 58-104(6) and 58-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Informal public meetings were held in September pursuant to separate public notice. Additional Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

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

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

The repeal of the “Timber Supply Stabilization Act of 1989,” Title 58, Chapter 10, Idaho Code, during the 2010 legislative session has made IDAPA 20.02.11 obsolete. It is hereby repealed in its entirety.

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted because the authorizing statute was repealed by the 2010 Legislature.

GENERAL INFORMATION: For more information about IDL’s programs and activities, visit IDL’s web site at <http://www.idl.idaho.gov>.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact the undersigned.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The IDL will consider all written comments received by the undersigned on or before October 27, 2010.

DATED this 31st day of August, 2010.

IDAPA 20.02.11 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 20 - DEPARTMENT OF LANDS

20.02.14 - RULES FOR SELLING FOREST PRODUCTS ON STATE-OWNED ENDOWMENT LANDS

DOCKET NO. 20-0214-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, and IDAPA 20.01.01, Rules of Practice and Procedure before the State Board of Land Commissioners (Board), notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 58-104(6), Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010, Idaho Administrative Bulletin, Vol. 10-10, pages 352 through 357.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, please contact the person below.

DATED this 16th day of November.

Bob Helmer
Bureau Chief, Forest Management
Idaho Department of Lands
3284 West Industrial Loop
Coeur d'Alene, Idaho 83815
208-666-8610 office
208-769-1524 fax

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Department of Lands has proposed rulemaking. The action is authorized by Sections 58-104(6), 58-105, 58-403 and 58-412, Idaho Code.

PUBLIC HEARING SCHEDULE: Informal public meetings were held in September pursuant to separate public notice. Additional Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

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

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

The proposed changes to IDAPA 20.02.14 will:

- 1) Authorize the IDL to sell state timber as delivered products;
- 2) Expand state timber auction to allow additional bidding methods;
- 3) Authorize the Director to set permit rates and values; and
- 4) Clarify existing rules for state timber purchasers and the IDL.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

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

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted because the proposed rules impose no new fee or charge and because of the diverse interests of potentially affected parties.

GENERAL INFORMATION: For more information about IDL's programs and activities, visit IDL's web site at <http://www.idl.idaho.gov>.

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

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN

COMMENTS: For assistance on technical questions concerning this rulemaking, contact the undersigned.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The IDL will consider all written comments received by the undersigned on or before October 27, 2010.

DATED this 31st day of August, 2010.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 20-0214-1001

010. DEFINITIONS.

- 01. Board.** The Idaho State Board of Land Commissioners. (5-8-09)
- 02. Cable Yarding.** Transportation of forest products from stump to road by means of a suspended, powered cable system. (5-8-09)
- 03. Cedar.** Western Red Cedar (*Thuja plicata*). (5-8-09)
- 04. Cedar Pole.** A segment or portion of a western red cedar tree that can be manufactured into a utility pole meeting current ANSI Specifications. (5-8-09)
- 05. Contract.** Timber sale contract in a form prescribed by the Department. (5-8-09)
- 06. Department.** The Idaho Department of Lands. (5-8-09)
- 07. Development Credits.** A stumpage credit received by the purchaser for the construction or reconstruction of roads, bridges, or other permanent improvements. (5-8-09)
- 08. Director.** The director of the Idaho Department of Lands or his authorized representative. (5-8-09)
- 09. Extreme Circumstances.** Catastrophic circumstances including, but not limited to, fire, downed timber due to a wind event, flood, earthquake, destruction of a purchaser's milling facilities or equipment by fire, or milling operation shut down due to a court order related to compliance with state or federal environmental laws. (5-8-09)
- 10. Forest Products.** Marketable forest materials. (5-8-09)
- 11. Ground-Based Yarding.** Transportation of forest products from stump to road using tractors, forwarders, or rubber-tired skidders. (5-8-09)

- 12. Length.** The length of a pole in five (5) foot increments. (5-8-09)
- 13. Measurement.** Weight, length, board foot volume, cubic volume, or any other means or procedure for determining quantity of forest products. (5-8-09)
- 14. Net Appraised Value.** The minimum estimated sale value of the forest products after deducting the development credit. (5-8-09)
- 15. Net Sale Value.** The final sale bid value of the forest products after deducting the development credit. (5-8-09)
- 16. Public Auction.** Any advertised sale with notice to the general public at which bids are made and accepted. Public auctions include, but are not limited to, oral auctions and the announcement of sealed or electronically submitted bids. ()
- 167. Pulp.** Any portion of a tree that does not meet the sawlog merchantability specifications of thirty-three and one-third percent (33 1/3%) net scale. (5-8-09)
- 178. Purchaser.** A successful bidder for forest products from a state sale who has executed a timber sale contract. (5-8-09)
- 189. Roads.** Forest access roads used for the transportation of forest products. (5-8-09)
- 1920. Scaling.** Quantitative measurement of logs or other forest products by a log rule. (5-8-09)
- 201. Scribner Decimal "C" Board Foot Measure.** The measurement of forest products in accordance with the log rule described in Title 38, Chapter 12, Idaho Code, and the rules promulgated thereunder. (5-8-09)
- 212. State.** The State of Idaho. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

019. FIREWOOD AND OTHER PERSONAL USE PRODUCT PERMITS.

~~Permits for the sale of dead and down forest products~~ Permits for personal use will be sold on a charge basis ~~at a rate determined by the Board. Permits will not exceed a maximum value established by the Director.~~ The Director shall determine permit rates and maximum permit values. (5-8-09)()

020. DIRECT SALES.

The direct sale of forest products without advertisement may be authorized by the Director if the net appraised value does not exceed the maximum value established by the Board. This type of sale is to be used to harvest isolated or by-passed parcels of timber of insufficient value and volume to justify a salvage sale (refer to Rule Section 021). The direct sale shall not be used when

two (2) or more potential purchasers may be interested in bidding on the forest products offered for sale. The initial duration of a direct sale shall ~~not exceed an initial period of~~ be six (6) months with a provision for one six (6) month extension. The purchaser shall furnish an acceptable performance bond in the amount of thirty percent (30%) of the sale value with a minimum bond of one hundred dollars (\$100). Advance payment will be required and all sales will be on a lump sum basis. (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

023. DELIVERED PRODUCT SALES.

The Director may contract logging services and sell forest products at public auction. Purchasers of delivered forest products will be required to provide a ten percent (10%) initial deposit and a guarantee of payment bond. ()

0234. SALE OF CEDAR POLES~~SALE SELECTION.~~

01. Requirements for Cedar Poles~~Sale.~~ ~~*Pole quality cedar shall be reserved for a cedar pole sale if the proposed sale area contains at least one hundred fifty (150) cedar poles in a density of at least five (5) poles per acre on ground based yarding areas, the and at least ten (10) poles per acre on cable yarding areas. Areas with a lower density of poles may be offered as a pole sale if the Department determines that such sale is economically feasible.*~~ If a proposed sale area contains at least one hundred fifty (150) cedar poles in a density of at least five (5) poles per acre on ground based yarding areas and at least ten (10) poles per acre on cable yarding areas, the pole quality cedar shall be reserved and sold separately as a pole sale or as a separate product sort in a delivered products sale. Pole quality cedar in areas with a lower density of poles may be offered as poles. (5-8-09)()

02. Maximum Amount of Sawlogs. Sawlogs and other forest products shall not exceed fifty percent (50%) of the total sale volume, excluding materials generated through the construction of roads and development sites. (5-8-09)

03. Poles within Sawlog Sale. If any area within a proposed timber sale contains two hundred fifty (250) cedar poles or more in a density of at least ten (10) poles per acre, the poles shall be reserved for a pole-quality cedar sale or sold as a separate product sort in a delivered products sale. (5-8-09)()

~~024. CEDAR POLE SALE PROCEDURES.~~

~~014.~~ Length Appraisal. Cedar poles shall be appraised by length and bid on a lineal foot basis. The conversion table set out below shall be used to establish the corresponding board foot volume. (5-8-09)

~~025.~~ Length to Volume Conversion Table for Western Red Cedar Poles:

Pole Length	Board Feet Each*		Pole Length	Board Feet Each*
30'	50		80'	595
35'	70		85'	736
40'	101		90'	792
45'	161		95'	892
50'	239		100'	929
55'	261		105'	1113
60'	304		110'	1132
65'	418		115'	1420
70'	462		120'	1475
75'	512			
* Based on Scribner Decimal "C" board foot measure				

(5-8-09)

036. Bidding Limited to Cedar. When cedar represents eighty percent (80%) or more of the total appraised value, bidding shall be limited to cedar poles and cedar sawlogs only.

(5-8-09)

047. Purchaser's Option. The purchaser may opt to remove cedar as poles, sawlogs, and products or as sawlogs and products. Such choice shall be made at the completion of the auction. If the purchaser opts to manufacture the cedar as poles, the poles and sawlog material shall be removed at bid prices (lineal foot basis for poles and MBF basis for sawlogs). Pole-quality cedar trees containing thirty (30) foot cedar poles may be harvested as poles or sawlogs at the purchaser's discretion unless such trees are designated reserve. If the purchaser elects to manufacture cedar poles as sawlogs, the bid values of cedar poles and cedar sawlog material shall be weighted by volume to determine the selling value for all cedar sawlogs.

(5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

031. TIMBER SALE AUCTIONS.

01. Requirements. Timber, Salvage, and Delivered Products sales shall be sold at public auction. ()

02. Requirements for Bidding. (5-8-09)

a. Bidders shall present a bid deposit in a form acceptable to the State in the amount of ten percent (10%) of the net appraised value. (5-8-09)

- b. Bidders shall not be delinquent on any payments to the State at the time of sale. (5-8-09)
- c. Bidders shall not be a minor as defined in Section 32-101, Idaho Code. (5-8-09)
- d. Foreign corporations, as defined in Section 30-1-106, Idaho Code, shall procure a certificate of authority to do business in Idaho to be eligible to bid on and purchase State timber. (5-8-09)

~~02. **Opening the Auction.** The Director's representative will open the sale, read the advertisement, ask for questions, and then accept bid deposits. Each eligible bidder will select a numbered card to determine who will be allowed the first bid. The person entitled to the first bid may bid the minimum appraised or any higher price. Any bidder is then entitled to bid and bidding progresses with each previous bid being accepted by the last bidder. All bidding is done in the form of an oral auction.~~ (5-8-09)

~~03. **Closing the Auction.** The Director's representative will close the auction and award the sale to the successful bidder. Bid deposits will be returned to the unsuccessful bidders. Sale values and charges will be calculated on the day of sale. Within ten (10) days the successful bidder will be required to pay ten percent (10%) of the final net sale value. Surety bid bonds must be replaced with cash within ten (10) days of the date of sale, either separately or as part of the total ten percent (10%) initial deposit.~~ (5-8-09)

~~032. **TIMBER SALE CONTRACT SIGNATURES.**~~

~~The Department shall prepare and make available to the purchaser a contract and supplemental documents, including bond forms, with appropriate instructions. The purchaser shall return the signed contract and bonds for appropriate State signatures. The State will return a fully executed contract to the purchaser.~~ (5-8-09)

0332. INITIAL DEPOSIT AND BONDS.

01. Initial Deposit. The initial deposit (ten percent (10%) of net sale value) shall be paid in cash and shall be retained by the state as a cash reserve for the duration of the contract; the purchaser shall not be entitled to any interest earned thereon. All or a portion of the initial deposit may be applied to charges as the contract nears completion. Any remaining initial deposit shall be forfeited in the event the contract is terminated without being completed. (5-8-09)()

02. Performance Bond. A bond of sufficient amount for carrying out in good faith all applicable laws and all the terms and conditions imposed by the Board and the sale contract or fifteen percent (15%) of the net sale value of the forest products (whichever is greater) shall be executed within thirty (30) days from the date of sale ~~but~~ and prior to execution of the contract. Failure to perform on the contract may result in forfeiture of all or a portion of the performance bond. (5-8-09)()

03. Guarantee of Payment. Prior to cutting of any forest products, the purchaser shall provide a bond acceptable to the Department as assurance of payment for products to be cut and/or removed during the next ninety (90) days. Guarantee of payment on delivered product sales shall be as determined by the Department. This bond is in addition to the required initial deposit.

Failure to make full and timely payment as per contract terms may result in forfeiture of all or a portion of the guarantee of payment. (5-8-09)()

0343. -- 040. (RESERVED).

041. STUMPAGE AND INTEREST PAYMENT.

A stumpage summary of forest products measured during the prior month and a statement of account will be prepared by the Department and forwarded to the purchaser monthly. The statement shall include interest computed from the date of sale to the date of the billing at a rate specified in the contract. The purchaser shall make payments within thirty (30) days of the end of the billing period or the payment shall be considered delinquent. Interest will not be charged on delivered product sales. (5-8-09)()

042. TIMBER SALE CANCELLATION.

It is the purchaser's responsibility to initiate cancellation by submitting such request in writing to the respective supervisory area office. ~~A signed and notarized early release form must be completed by the purchaser when cancellation is requested prior to the original contract expiration date.~~ When all contractual requirements have been completed, final payments have been received, all load tickets have been accounted for, and a written request for cancellation has been received by the Department, any credit balances and all cash bonds will be returned and/or transferred to other timber sale accounts within forty-five (45) days, as requested by the purchaser within forty-five (45) days. (5-8-09)()

043. PREMATURE TIMBER SALE TERMINATION.

01. Request. A timber sale purchaser may, for reasons of hardship, make written request to terminate a timber sale contract before harvesting is completed. In such cases, the Board will determine if a hardship exists and if the contract should be terminated. (5-8-09)

02. Premature Termination Policy. (5-8-09)

a. The Board may authorize premature termination of any sale under any terms considered reasonable and appropriate. Any remaining amount of the ten percent (10%) initial deposit will be retained ~~as a penalty, which amount may not be used as payment for forest products cut and/or removed. Additionally, the Board will seek payment of the value of the overbid for the uncut residual volume. For example, if white pine had been bid up by five dollars (\$5) per thousand board feet over the appraised price and there are one hundred thousand (100,000) board feet of white pine remaining on the sale area, the purchaser will have to pay five hundred dollars (\$500) upon termination~~ in full and applied towards assessed damages and may not be used as payment for forest products cut and/or removed. Assessed damages in excess of the initial deposit will be applied against the performance bond. (5-8-09)()

b. The following damages will be assessed by the Board for premature sale terminations. ()

i. The Board will seek payment of the value of the overbid for the uncut residual volume. For example, if white pine had been bid up by five dollars (\$5) per thousand board feet over the appraised price and there are one hundred thousand (100,000) board feet of white pine

remaining on the sale area, the purchaser will be assessed five hundred dollars (\$500) upon termination. ()

ii. The Board will seek payment of the accrued stumpage interest due the endowed institutions based on the interest rate specified in the contract and calculated on all remaining volume from the date of sale to the date the Board approved termination of the contract. ()

iii. The Board will seek payment for any credits given for developments that remain incomplete at the time of termination. ()

iv. The Board will seek payment for estimated Department costs associated with reoffering the timber sale. ()

v. The Board may also seek payment for other expenses including, but not limited to, legal costs and Department staff time. ()

bc. If logging has occurred on the sale, the purchaser must complete the units that have been partially logged according to contract standards and complete all development work as specified in the contract to the extent of allowances that have been credited to the purchaser. (5-8-09)

ed. The purchaser who has terminated a timber sale contract will not be eligible to rebid that particular sale unless specifically authorized to do so by the Board. (5-8-09)

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION
26.01.34 - RULES GOVERNING THE IDAHO PROTECTION AGAINST
INVASIVE SPECIES STICKER RULES

DOCKET NO. 26-0134-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-7002 and 67-7008A, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-4249, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010, Idaho Administrative Bulletin, Vol. 10-10, pages 423 and 424.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact David M. Ricks, 208.514.2450.

DATED this 10th day of November, 2010

David M. Ricks
Deputy Director
Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716-8700
PO Box 83720
Boise, Idaho 83720-0065
Telephone: 208.514.2450
FAX: 208.334.3741

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-7002, and 67-7008A Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20th 2010.

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

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

To provide for an affidavit type process verifying the purchase of Idaho Invasive Species Stickers for enforcement of the program in lieu of the requirement to physically apply the Idaho Invasive Species Sticker to a licensed outfitted or guided non-motorized watercraft.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking affects only licensed outfitters and guides and is being promulgated on the basis of prior negotiations with the Department.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact David M. Ricks, 208-514-2450.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27th, 2010.

DATED this 31st day of August, 2010.

THE FOLLOWING IS THE TEXT FOR DOCKET NO. 26-0134-1001

050. COLLECTION OF FEES AND DISTRIBUTION OF REVENUES INTO FUND.

In addition to any other moneys or fees collected pursuant to Section 67-7008 or any other provision of Title 67, Chapter 70, Idaho Code, all vessels are required to pay an additional fee as established in Section 67-7008A, Idaho Code. (3-29-10)

01. Operator Responsibilities. The operator of any watercraft required to display a Protection Against Invasive Species Sticker pursuant to this chapter will ensure that fees are paid and that a Protection Against Invasive Species Sticker is displayed on the vessel, except as provided in Subsection 075.01 of this chapter, prior to launch into the public waters of Idaho. (3-29-10)

02. Prorated Group Rates for Commercial Outfitters. ()

a. Group rates for commercial outfitters with nonmotorized fleets exceeding five (5) vessels will be determined using the number of vessels *being stickered within the fleet* at the time of purchase *of the stickers*, as provided in Section 67-7008A(1)(c). Previous or future sticker purchases will be prorated separately. (3-29-10)()

b. Protection Against Invasive Species Stickers purchased by outfitters or guides who are duly licensed in accordance with Title 36, Chapter 21, Idaho Code, shall be accompanied by an affidavit which shall be signed by the outfitter or guide. The signed affidavit shall verify the number of vessels within the covered fleet and that the appropriate number of Protection Against Invasive Species Stickers has been purchased. The Protection Against Invasive Species Stickers and affidavit shall be kept on file at the outfitter or guide's physical address and shall be made available for inspection upon request of the Department or upon request by law enforcement. Non-motorized commercial outfitters and guides are not required to place a Protection Against Invasive Species Sticker on their vessels. Identification of commercial outfitted and guided boats shall be in compliance with IDAPA 25.01.01, "Rules of the Outfitters and Guides Licensing Board," Subsection 054.03.a. ()

03. Transfer of Funds. Fees collected will be transferred and deposited into the Fund no less than quarterly during any fiscal year. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

076. PLACEMENT OF PROTECTION AGAINST INVASIVE SPECIES STICKER.

01. Location. (3-29-10)

a. Motorized vessel. Except as provided in Subsection 075.01 of this chapter, the Protection Against Invasive Species Sticker should be affixed next to the current year Registration Validation Sticker on the port (left) side of the vessel. (3-29-10)

b. Non-motorized. Except as provided in Subsection 050.02.a. of this chapter, the Protection Against Invasive Species Sticker should be affixed in the following manner.
(~~3-29-10~~)()

i. For canoes, kayaks, and other small rigid vessels, the Protection Against Invasive Species Sticker should be affixed near the bow above the waterline on the port (left) side, or on top of the vessel if there is little or no waterline distinction. (3-29-10)

ii. For inflatable (non-rigid) vessels, the Protection Against Invasive Species Sticker can be modified to allow attachment of a zip tie, plastic attachment, or other similar mechanism, or be laminated into a hang tag. (3-29-10)

02. Removal. Protection Against Invasive Species Stickers issued in accordance with Section 67-7008A, Idaho Code, which have become invalid, shall be removed from the vessel. (3-29-10)

IDAPA 37 - DEPARTMENT OF WATER RESOURCES

37.03.10 - WELL DRILLER LICENSING RULES

DOCKET NO. 37-0310-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 42-238(6), Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [September 1, 2010 Idaho Administrative Bulletin, Vol. 10-9, pages 431 through 443](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Chad Hersley @ 287-4930.

DATED this Tuesday, October 26, 2010.

Chad Hersley
Technical Hydrogeologist
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, Idaho 83720
Telephone 208-287-4930
FAX 208-287-6700

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 42-238(6), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2010.

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

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

Continuing education credits required for license renewal for licensed drillers will be reduced from the current sixteen units to fourteen units to coincide with the number of credits available through the various seminars and workshops.

Definitions will be updated to be consistent with those found IDAPA 37.03.09, "Well Construction Standards Rules," updated in 2009.

Application requirements relating to experience and compliance history of the applicant renewing or obtaining a license will be updated to be consistent with Idaho Code.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted.

The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 7, 2010 Idaho Administrative Bulletin, Vol. 10-7. A public meeting was held on the negotiated rulemaking on Friday, July 9, 2010 at 9:00 am.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Chad Hersley @ 287-4930.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this July 30, 2010.

THE FOLLOWING IS THE TEXT FOR DOCKET NO. 37-0310-1001

010. DEFINITIONS (RULE 10).

Unless the context otherwise requires, the following definitions govern these rules. (4-5-00)

01. Abandonment. ~~Filling, plugging or otherwise rendering a well to a condition that it cannot be used to produce or dispose of water or other fluids and it is not a conduit for waste or contamination of ground water~~ See Decommissioned Well. (4-5-00)(____)

02. Adequate Supervision. Inspection and observation of each drilling operation and the associated drilling site by the licensed driller that has responsible charge during the critical phases of drilling to assure compliance with well construction standards and drilling permit conditions. (4-5-00)

03. Applicant. An individual that submits to the department a complete application for a license or operator's permit or a company that submits a complete application for a license. (4-5-00)

04. Area of Drilling Concern. An area designated by the director in accordance with Section 42-238, Idaho Code, within which special drilling procedures and equipment are needed to prevent waste or contamination of the ground water. (4-5-00)

05. Auxiliary Equipment. Powered equipment, other than the drill rig, used for grouting, installing or advancing casing, welding casings and screens, and other tasks necessary for drilling a well. (4-5-00)

06. Board. The Idaho Water Resource Board. (4-5-00)

07. Bond. A cash or surety bond obtained by a licensed driller or company payable to the director to provide funding for abandonment or repair should the driller fail to comply with well construction standards, and to allow information to be collected concerning the drilling of the well if the driller fails to submit a timely, accurate driller's report. (4-5-00)

08. Bottom Hole Temperature of an Existing or Proposed Well. The temperature of the ground water encountered in the bottom of a well or borehole. ()

089. Company. A firm, co-partnership, corporation or association licensed in accordance with these rules to drill or contract to drill wells. (4-5-00)

0910. Compliance History. An applicant's record of compliance with the laws and rules of Idaho and other states relating to drilling of wells. The record includes, but is not limited to, the applicant's record of obtaining and complying with drilling permits; filing accurate and complete well driller's reports on time; adhering to well construction standards and other rules relating to drilling; and the number, nature and resolution of violations of laws, rules and conditions on licenses, operator's permits and drilling permits. (4-5-00)

101. Continuing Education. Education or training pertinent to the drilling industry and the construction, modification or ~~abandonment~~ decommissioning of wells. (~~4-5-00~~)()

112. Continuing Education Committee (CEC). A committee ~~appointed by the director~~ whose purpose is to review and approve activities ~~acceptable for~~ related to continuing education credit. (~~4-5-00~~)()

113. Credit Unit. The unit of measurement for continuing education requirements. (4-5-00)

1314. Critical Phases of Drilling. Drilling tasks that require the added experience of a licensed driller to assure completion of the well in accordance with the well construction standards and conditions of drilling permits. These tasks include, but are not limited to, placement of required casings and seals, testing of casings and seals, and resolving problems such as casing or joint failures, heaving formations, lost circulation, and encountering high pressure or high temperature water. (4-5-00)

15. Decommissioned (Abandoned) Well. Any well which has been permanently removed from service and filled or plugged in accordance with these rules so as to meet the intent of these rules. A properly decommissioned well will not: ()

a. Produce or accept fluids; ()

b. Serve as a conduit for the movement of contaminants inside or outside the well casing; or ()

c. Allow the movement of surface or ground water into unsaturated zones, into another aquifer, or between aquifers. ()

1416. Department. The Idaho Department of Water Resources. (4-5-00)

1517. Director. The director of the Idaho Department of Water Resources or his duly authorized representative. (4-5-00)

~~16~~**18. Drilling or Well Drilling.** The act of constructing a new well, or modifying, changing the construction, or ~~abandoning~~ **decommissioning** an existing well. (4-5-00)()

~~17~~**19. Drilling Permit.** Authorization by the department to drill a well as provided in Section 42-235, Idaho Code. (4-5-00)

~~18~~**20. Drilling Site.** The location of the drill rig and immediate area where the drill rig and auxiliary equipment are set up to drill a well. (4-5-00)

21. Global Positioning System (GPS). A global navigational receiver unit and satellite system used to triangulate a geographic position. ()

~~19~~**22. License.** A certificate issued by the director to an individual or a company upon meeting the requirements of Section 42-238, Idaho Code, and these rules authorizing the drilling of wells permitted in accordance with Section 42-235, Idaho Code. (4-5-00)

~~20~~**23. Licensed Driller.** An individual having a license to drill wells **and is authorized and required to supervise operators** in the state of Idaho. (4-5-00)()

~~21~~**24. Modify.** To deepen a well, increase or decrease the diameter of the casing or the well bore, install a liner, place a screen, perforate existing casing or liners, alter the seal between the casing and the well bore, or alter the well to not meet well construction standards. (4-5-00)

~~22~~**25. Operator.** An individual holding either a class I or class II operator's permit issued in accordance with these rules. (4-5-00)

~~23~~**26. Operator's Permit.** A certificate issued by the director upon meeting the requirements of Section 42-238, Idaho Code, and these rules allowing the holder to operate a drill rig as provided in these rules. (4-5-00)

~~24~~**27. Principal Driller.** A licensed driller in responsible charge of a company's drilling activities, which has been designated the principal driller by the company with the department. (4-5-00)

~~25~~**28. Responsible Charge.** The responsibility for direction and control of a drilling operation to meet the requirements of these rules including, but not limited to, the following activities: (4-5-00)

- a. Contracting to drill a well; (4-5-00)
- b. Coordinate with property owner to locate a well to comply with applicable well construction standards; (4-5-00)
- c. Setting up drilling equipment at the drilling site; (4-5-00)
- d. Drilling operations; and (4-5-00)
- e. Testing the adequacy of casing and seal; (4-5-00)

f. Properly completing the well. ()

29. Start Card. An expedited drilling permit process for the construction of cold water Single Family residential wells. ()

2630. **Well.** An artificial excavation or opening in the ground more than eighteen (18) feet in vertical depth below land surface by which ground water of any temperature is sought or obtained. The depth of a well is determined by measuring the maximum vertical distance between the land surface and the deepest portion of the well. Any water encountered in the well is considered to be obtained for the purpose of these rules. Well also means any waste disposal and injection well as defined by Section 42-3902, Idaho Code. (4-5-00)

2731. **Well Construction Standards.** IDAPA 37.03.09, "Well Construction Standards Rules," adopted by the board. (4-5-00)

2832. **Well Driller's Report or Driller's Report.** A report required by Section 42-238, Idaho Code, describing drilling of the well and supplying information required on forms provided by the department. (4-5-00)

2933. **Well Log.** A diary maintained at the drilling site ~~on forms acceptable to the department to record the daily progress and nature of drilling operations and that describe, in particular, pertinent geologic conditions, any problems encountered and methods used to resolve them~~ consistent with Section 42-238, Idaho Code. (4-5-00)()

3034. **Well Rig or Drill Rig.** Any power-driven percussion, rotary, boring, digging, jetting, or augering machine used in the drilling of a well. (4-5-00)

011. -- 019. (RESERVED).

020. APPLICABILITY OF LICENSING REQUIREMENTS (RULE 20).

01. Licensing Requirements. A well shall only be drilled by or under the responsible charge of a licensed driller except that a property owner, who is not licensed, can construct a well on his property for his own use without the aid of power-driven mechanical equipment. (4-5-00)

02. Driller to Have Responsible Charge of Other Workers. A licensed driller shall have responsible charge of all others engaged in a well drilling operation. (4-5-00)

03. Operators to Have Permits. An individual assisting a licensed driller whose duties include operation of a drill rig or auxiliary equipment shall possess an operator's permit as provided in these rules. If the driller is not present at the well site at all times that drilling operations are being conducted, one or more of those operating the equipment in the driller's absence shall have a class II operator's permit. The driller shall provide adequate supervision of class II operators. An individual having a class I operator permit shall be supervised by a licensed driller or a class II operator at all times when operating the drill rig or auxiliary equipment. (4-5-00)

04. Laborer Exempted. An individual whose duties at the drilling site do not include operation of the drill rig or auxiliary equipment at any time is not required to have either a driller's license or an operator's permit. (4-5-00)

05. Company to be Licensed. No company shall drill or contract to drill a well or wells unless the company has been issued a license and has employed a principal driller as described in accordance with these rules. (4-5-00)

06. Drillers to Decommission (Abandon) Wells. Only licensed drillers may decommission (abandon) wells, except that wells may be decommissioned (abandoned) by the owner after receiving a specific waiver from the Director. (~~4-5-00~~)()

(BREAK IN CONTINUITY OF SECTIONS)

030. OBTAINING A LICENSE FOR AN INDIVIDUAL DRILLER (RULE 30).

01. Application Requirements. An individual desiring a license shall file with the department a completed application on a form provided by the department accompanied by the following: (4-5-00)

- a. The application fee required by Section 42-238, Idaho Code. (4-5-00)
- b. Written documentation of drilling experience, compliance history, and the names and addresses of three (3) references to confirm the applicant's drilling experience. (4-5-00)
- c. A list of all drill rigs used by or under the responsible charge of the applicant providing the make, model, and type. (4-5-00)
- d. The names and addresses of all licensed drillers and permitted operators that will work under the responsible charge of the applicant. (4-5-00)

02. Experience Requirements. (4-5-00)

a. An applicant shall have a minimum of ~~thirty~~ twenty-four (~~30~~24) months of drilling experience. An applicant will be credited with one (1) month of drilling experience for each one hundred sixty (160) hours of employment as a driller or operator, or the equivalent, as determined by the director. Experience drilling monitoring wells, geothermal wells or other cased wells will be credited as experience by the Director if the equipment and drilling methods are applicable to water well construction. (~~4-5-00~~)()

b. An applicant for driller's license shall submit evidence to establish that the applicant, as an operator or driller, has successfully constructed a sufficient number of wells within the preceding ~~thirty~~ twenty-four (~~30~~24) months to demonstrate competency. Evidence of this experience can be demonstrated by the submission of driller's reports bearing the applicant's signature, well reports upon which the driller having responsible charge attests that the applicant

drilled the wells or other documentation acceptable to the director. (4-5-00)()

c. Twelve (12) of the ~~thirty~~ twenty-four (~~30~~24) months drilling experience must have occurred within the five (5) year period immediately preceding the filing of the application. (4-5-00)()

d. Successful completion of classroom study in geology, well drilling, map reading, and other related subjects may be substituted for up to, but not exceeding, twelve (12) months of drilling experience. The director will determine the number of months of classroom study, up to twelve (12), to be credited as experience. (4-5-00)

03. Examination. An applicant determined by the director to have adequate experience and an acceptable compliance history, as confirmed by references acceptable to the director, is eligible to take a written examination. The examination may include separate sections and shall test the applicant's knowledge of the following: (4-5-00)

a. Idaho statutes and rules relating to appropriation and use of ground water, well drilling, construction and use of injection wells and geothermal wells, and well driller licensing under the provisions of Title 42, Idaho Code. (4-5-00)

b. Land description by government lot, quarter-quarter, section, township and range, and the use of portable GPS units. (4-5-00)()

c. Geologic material identification including the use of correct terminology in describing the geologic material. (4-5-00)

d. Well construction principles relating to the proper design, construction, development, and abandonment of wells. (4-5-00)

e. The occurrence, nature, and movement of ground water. (4-5-00)

f. The use of various types of drill rigs and auxiliary equipment. (4-5-00)

031. OBTAINING A LICENSE FOR A COMPANY (RULE 31).

01. Application Requirements. A company shall file with the department a complete application for a company license upon a form provided by the department to be accompanied by the following: (4-5-00)

~~a. The application fee required by Section 42-238, Idaho Code.~~ (4-5-00)

ba. The names and addresses of three (3) disinterested persons not affiliated with the company, whom the department can contact for information regarding the company's past well drilling operations, if any, and related business activities. (4-5-00)()

eb. A complete record of the compliance history of the company and the owners and employees of the company. (4-5-00)

dc. Designation of a principal driller who shall be a full time employee of the company and shall drill wells only for the company. A licensed driller who renders only occasional, part-time or consulting drilling services to or for a company may not be designated as the principal driller. (4-5-00)

ed. The names and addresses of drillers and operators presently employed. (4-5-00)

fe. A list of all drill rigs and other related equipment owned or used by the company providing the make, model, and type. (4-5-00)

02. Application Processing. Applications received under this rule will be processed in accordance with Rule 33. (4-5-00)

032. OBTAINING AN OPERATOR'S PERMIT (RULE 32).

01. Application for Class I Operator's Permit. A licensed driller or company proposing to employ a class I operator shall submit a completed application on a form provided by the director. The application shall: (4-5-00)

a. Be accompanied by the fee required by Section 42-238, Idaho Code. (4-5-00)

b. Be signed by the individual seeking the operator's permit and the licensed driller or principal driller of the company proposing to employ the operator. (4-5-00)

02. Application for Class II Operator's Permit. A licensed driller or company proposing to employ an individual who does not currently hold a class II operator's permit shall submit the following: (4-5-00)

a. A completed application on a form provided by the department. (4-5-00)

b. The fee required by Section 42-238, Idaho Code. No fee is required if the applicant is presently permitted as a class I operator, but the expiration date of the permit when converted to a class II operator's permit will remain as originally issued. (4-5-00)

c. Documentation that the operator has successfully constructed a sufficient number of wells, or has constructed wells for a sufficient length of time, or a combination of both to demonstrate competency. (4-5-00)

03. Written Examination. An examination is not required for a class I operator's permit. An otherwise qualified applicant for a class II operator's permit shall obtain a satisfactory score on an examination as provided in Rule 34. The examination may be comprised of separate sections and shall test the applicant's knowledge of the following: (4-5-00)

a. Idaho statutes and rules relating to appropriation and use of ground water, well drilling, construction and use of injection wells and geothermal wells, and well driller licensing under the provisions of Title 42, Idaho Code. (4-5-00)

b. Land description by government lot, quarter-quarter, section, township, and range.

and the use of portable GPS units. (4-5-00)()

c. Geologic material identification including the use of correct terminology in describing geologic material. (4-5-00)

d. Well drilling principles relating to proper design, construction, development, and abandonment of wells. (4-5-00)

e. The occurrence, nature, and movement of ground water. (4-5-00)

04. Operator Drills Only for Licensed Driller or Company. An operator shall only drill for the licensed driller or company approved by the director. If an operator changes employment to another licensed driller or company, an application for an operator's permit shall be filed as provided in this rule. ~~The director may waive the examination requirement if the operator has a history of complying with these rules and the well construction standards.~~ (4-5-00)()

05. Processing an Application for Operator's Permit. The department will process an application for operator's permit in accordance with Rule 33. (4-5-00)

033. PROCESSING APPLICATION FOR A DRILLER'S LICENSE OR OPERATOR'S PERMIT (RULE 33).

01. Incomplete Application. If an application is incomplete, not properly signed, or does not include the information required by these rules, the department will advise the applicant in writing of the deficiency. If the deficiencies are not satisfied within ~~one hundred twenty~~ ninety (~~120~~90) days of sending the notice of the deficiency, the application ~~and supporting documents will be returned to the applicant~~ will be void. The application fee is not refundable. (4-5-00)()

02. Issuance of License. If the director, upon review of the application, determines that an applicant for license is qualified and the driller has subsequently taken and passed an examination, a notice will be sent to the applicant requesting a bond in an amount determined in accordance with Rule 60 be filed with the department. Upon receipt of a satisfactory bond, the director will issue a license to the applicant. (4-5-00)

03. Issuance of Operator's Permits. If the director determines that an applicant is qualified and has passed an examination, if required, the department will mail a notice and operator's permit card to the principal driller on behalf of the applicant. (4-5-00)

04. Driller's License or Operator's Permit Issued With Conditions or Denial of License or Operator's Permit. The Director may issue a license or operator's permit with specific conditions or limitations based on the applicant's experience and compliance history. ~~If the director, after consulting with the Driller's Advisory Committee, established in Rule 80, determines that the applicant's compliance history includes significant violations of well drilling laws and/or rules, including well construction standards, the director may deny the license or permit, refuse to issue for a specified time, or issue with conditions. The director may only consider the applicant's compliance history for the five (5) year period immediately preceding the~~

~~application being filed.~~ The Director may refuse to issue or renew a driller's license permanently or for a designated period of time if the driller has previously constructed wells improperly or constructed a well without a valid driller's license. If the Director determines that the applicant is not qualified, the Director will deny the application. Notice of a denied application or a conditioned license or operator's permit will be given to the applicant in accordance with IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." (4-5-00)()

034. EXAMINATION PROCEDURES (RULE 34).

01. Written Examination. Written examinations will be offered at department offices on the first Monday of each ~~month~~ quarter. If the first Monday is a legal holiday, written examination will be offered on the first Tuesday. Re-examination may be taken at a regularly scheduled examination date during a following ~~month~~ quarter and shall be scheduled with the department office originally testing the applicant. (4-5-00)()

02. Oral Examination. Successful passage of an oral examination may satisfy all or a part of the written testing requirements under the following circumstances: (4-5-00)

a. The applicant requests an oral rather than a written examination and shows cause acceptable to the director why the examination should be oral rather than written. Applicants desiring to take the examination orally shall request that an oral examination be scheduled allowing at least fifteen (15) days to set an examination date. (4-5-00)

b. The director determines that because of the applicant's compliance history, additional testing is needed to determine the applicant's qualifications. (4-5-00)

03. Examination Scoring. The applicant shall pass each section of the examination with a score of seventy percent (70%) or higher. (4-5-00)

04. Assistance Must Be Authorized. The use of written materials, equipment or other individuals to assist an applicant during an examination is prohibited unless specifically authorized by the department. An applicant receiving unauthorized assistance during an examination may be disqualified and the application may be rejected. An application filed by a disqualified applicant will not be processed for a period of up to one (1) year from the time of disqualification. (4-5-00)

035. EXPIRATION AND RENEWAL OF LICENSE (RULE 35).

01. Expiration of Licenses. ~~All licenses shall expire on March 31 during the second year after issuance.~~ All licenses expire at the end of the licensing period for which they are issued. The licensing period begins April 1 and ends March 31 of the second year following issuance. (4-5-00)()

02. Renewal Application. A license may be renewed by submitting a license renewal application including the following: (4-5-00)

a. A completed application on a form provided by the department. An application to renew a license for an individual licensed driller shall be signed by the individual and an

application to renew a license for a company shall be signed by the principal driller. (4-5-00)

- b. The renewal fee required by Section 42-238, Idaho Code. (4-5-00)
- c. A new bond or continuation certificate for an existing bond covering the licensed driller or company. (4-5-00)
- d. If the application is for renewal of a license held by an individual, the application shall include verification that the applicant has obtained the required continuing education credits. (4-5-00)

03. Continuing Education Requirements. ~~Eight (8) credit units are required for renewal of a license for an individual for the licensing period beginning April 1, 2001. Sixteen~~ **Fourteen** (164) credit units are required for renewal of a license for an individual for any licensing period beginning on or after April 1, ~~2002~~2011. (4-5-00)()

04. Welding Competency. A driller that has been issued a Notice of Violation for welding that does not comply with the well construction standards may be required to obtain a certificate of welding competency; from the American Welding Society or similar organization, ~~if the driller has been issued a Notice of Violation for welding that does not comply with the well construction standards.~~ (4-5-00)()

036. EXPIRATION AND RENEWAL OF AN OPERATOR'S PERMIT (RULE 36).

01. Expiration of Operator's Permits. Class I and class II operator's permits shall expire on March 31 of the same year that the license of the licensed driller and company employing the operator expires. (4-5-00)

02. Renewal Application. An operator's permit may be renewed by submitting to the department an application for renewal including the following: (4-5-00)

- a. A completed application on a form provided by the department. The operator seeking renewal and the driller under whose responsible charge the operator works shall sign the form. (4-5-00)
- b. The renewal fee required by Section 42-238, Idaho Code. (4-5-00)
- c. For renewal of a class II operator's permit, verification of the required continuing education credit units. (4-5-00)

03. Continuing Education Required for Renewals. ~~Eight credit units are required for renewal of a class II operator's permit for the two (2) year licensing period beginning April 1, 2001. Sixteen~~ **Fourteen** (164) credit units are required for renewal of a class II operator's permit for a licensing period beginning on or after April 1, ~~2002~~2011. (4-5-00)()

04. Welding Competency. An operator's work that has resulted in a Notice of Violation for welding that does not comply with the Well Construction Standards may be required to obtain a certificate of welding competency; from the American Welding Society or similar

organization, ~~if the operator's work has resulted in a Notice of Violation for welding that does not comply with the Well Construction Standards.~~ (4-5-00)()

037. PROCESSING APPLICATION TO RENEW LICENSE OR OPERATOR'S PERMIT (RULE 37).

01. Processing Applications for Renewal. Applications for renewal will be processed in the order received by the department. The department shall receive a complete application for renewal no later than March 15 to assure that the license or operator's permit will remain in force without interruption. If the director determines that the application is complete and the applicant is qualified, the license or operator's permit will be renewed for the period ending on March 31 of the second year after approval of the renewal. (4-5-00)

02. Regulatory Compliance Required for Renewals. A license or operator's permit will not be renewed if the applicant has not submitted all required driller's reports, applications for drilling permits, fees, agreed civil penalties, has not complied with all orders requiring repair or abandonment of improperly constructed wells or is not otherwise in compliance with Sections 42-235 and 42-238, Idaho Code, and the applicable rules. (4-5-00)

03. Compliance History. If the Director determines, ~~after consulting the Driller's Advisory Committee,~~ that the applicant has exhibited an unacceptable compliance history, the Director may deny renewal, refuse renewal for a specified time, or renew with conditions, including but not limited to an increased bond amount. ~~Up to five (5) years of the most recent licensed or permitted history may be considered to determine compliance.~~ (4-5-00)()

04. Renewal of Expired Licenses or Operator's Permits. A license or an operator's permit which has expired or otherwise not been in effect for a period not exceeding three (3) years shall be renewed in accordance with the requirements of Rule 35 or Rule 36 as appropriate. An applicant for renewal shall provide verification of earned credit units required for the entire period since the license or class II operator's permit was last issued. If a license or operator's permit has been expired or otherwise not effective for a period of more than three (3) years, an application for a new license shall be submitted in accordance with Rule 30 for an individual license, Rule 31 for a company or Rule 32 for an operator's permit. The director may waive the examination requirement if the applicant has been previously licensed or permitted in the state of Idaho. (4-5-00)

05. Reuse of Identification Numbers. The identification number assigned to a license by the department will not be reused if the license has been expired or otherwise not in effect for three (3) years or more except, at the director's discretion, the number may be reissued to the original owner. (4-5-00)

06. Condition or Denial of an Application for Renewal. If the Director determines that the applicant has not or cannot fully comply with these rules, a license or operator's permit may be issued with conditions. If the Director determines that the applicant is not qualified, the Director will deny the application. When there are *significant documented* violations of well drilling laws and/or rules, including well construction standards, the Director *will may* consult with the Driller's Advisory Committee, created in accordance with Rule 80, prior to making a decision to issue a conditional license or operator's permit or to deny an application based on the

applicant's compliance history. Notice of a denied application or a conditioned license will be given as provided in IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." (4-5-00)()

038. -- 049. (RESERVED).

050. DUTIES AND RESPONSIBILITIES OF DRILLERS, COMPANIES AND OPERATORS (RULE 50).

01. Licensed Drillers and Principal Drillers. All licensed drillers and principal drillers shall: (4-5-00)

a. Allow drilling only by those authorized by and under the supervision required by these rules and according to any conditions of the license or permit. (4-5-00)

b. Complete each well in compliance with IDAPA 37.03.09, "Well Construction Standards Rules," and drilling permit conditions. (4-5-00)()

c. Have a valid cash or surety bond in effect, as defined in Rule 60. (4-5-00)

d. Have the license number displayed in a conspicuous place on the drill rig using a metal identification plate provided by the department or other permanent marking approved by the director. The displayed license number shall represent the company or individual driller license under which the well is being drilled. One plate will be issued upon initial licensure with replacement and additional plates available for a fee. (4-5-00)

e. Keep current the department's list of operators and drillers employed by the licensed driller or company, including current addresses for the company, drillers, and operators. The licensed driller or principal driller shall be held responsible for all drilling activity of a driller or operator under their supervision until such notification has been submitted in writing to the department that the driller or operator is no longer employed by the licensed driller or company. (4-5-00)

f. Have at the drilling site the driller's license and drilling permit or other written authorization from the director to drill the well. (4-5-00)

g. Only drill wells in contaminated areas identified by the department or in areas of drilling concern so designated by the department with specific written authorization of the director. Verbal authorizations to drill and pre-approved drilling permits (start cards) do not authorize drilling in these areas. (4-5-00)

h. Only drill a public drinking water supply well, as defined in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," low temperature geothermal resource or geothermal resource well with specific written authorization from the director. Verbal authorizations and pre-approved start card permits (start cards) are not authorized for these uses. (4-5-00)()

i. Monitor and record bottom-hole temperature in areas where low temperature

geothermal resources are known or suspected or when the well is being constructed pursuant to IDAPA 37.03.09, Rule 30, as a low temperature geothermal resource well. Bottom-hole temperature of every well being constructed pursuant to IDAPA 37.03.09, Rule 30, must be measured, recorded, and reported on the well drillers report. ()

~~ij.~~ Maintain a daily well log at the drilling site ~~on a form~~ acceptable to the department ~~bearing the initials of the driller or operator recording information during the work shift. The well log shall be available for review by department personnel at the well site. The following information shall be recorded:~~ and as required by Section 42-238(11), Idaho Code. Pertinent data required to be recorded on the daily log must include information sufficient to complete a well drillers report acceptable to the Director. (4-5-00)

~~i. Borehole lithology;~~ (4-5-00)

~~ii. Water bearing zones;~~ (4-5-00)

~~iii. Static water levels;~~ (4-5-00)

~~iv. Bottom hole temperature;~~ (4-5-00)

~~v. Casing and sealing placement status;~~ (4-5-00)

~~vi. A description of problems encountered; and~~ (4-5-00)

~~vii.~~ The driller shall retain the well log for at least one (1) year after the driller's report is submitted to the department. (4-5-00)()

~~jk.~~ Submit driller's reports, acceptable to the Director, on forms approved by the department within thirty (30) days following removal of the drill rig from the drilling site at completion of the well. Driller's reports shall be prepared from information recorded on the daily well log. Driller's reports returned to the driller due to deficiencies must be corrected and returned to the department within thirty (30) days of mailing by the department. (4-5-00)()

~~kl.~~ Attach a well tag supplied by the department to every well drilled for which a drilling permit is required. The tag shall be affixed permanently to the casing, or other permanent object attached to the well, by a method approved by the Director prior to removing the well rig from the drilling site. (4-5-00)

~~lm.~~ Cause all drilling activity under the supervision of the driller to cease when the driller's license expires, becomes invalid, or is suspended or revoked. (4-5-00)

02. Companies. Companies shall: (4-5-00)

a. Have a principal driller designated with the department at all times. (4-5-00)

b. Notify the department within ten (10) days of the principal driller leaving employment with the company. The company's license shall immediately become void and of no effect when the principal driller leaves employment with the company and shall remain so until

the department has been notified in writing that a new principal driller has been employed and designated by the company. Failure to designate a principal driller within ninety (90) days of the departure of the designated principal driller is cause for the director to take action to cancel the company's license. (4-5-00)

- c. Maintain a bond in force at all time as required in Rule 60. (4-5-00)
- 03. Operators.** Operators shall: (4-5-00)
 - a. Have in their possession a valid operator's permit while drilling wells. (4-5-00)
 - b. Only drill wells as authorized by the operator's permit. (4-5-00)
 - c. Maintain a complete and accurate well log at the drilling site. (4-5-00)
 - d. Co-sign with the driller a driller's report upon completion of the well. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

070. CONTINUING EDUCATION (RULE 70).

01. Requirements. Every licensed driller ~~and or~~ permitted operator ~~shall~~ **must** have earned at the time of ~~license or permit~~ renewal the **applicable number of** credit units required by these rules. The credit units shall have been obtained during the licensing period preceding the application for renewal. (4-5-00)()

02. Earning Credit Units. ~~A e~~Credit units ~~is~~ **may be** earned for ~~each hour the applicant devotes to~~ **time spent in** attendance at workshops, seminars, short courses, and other educational opportunities devoted to drilling or related subjects acceptable to the Director ~~and approved by the continuing education committee (CEC) and in compliance with the CEC guidelines.~~ These may include completion of college courses, correspondence courses, videotaped courses, ~~active participation in professional organizations,~~ and other endeavors such as authoring appropriate publications. (4-5-00)()

03. Record Keeping Documentation. Documentation to support credit units claimed is the responsibility of the licensed driller and permitted operator. Records required include but are not limited to: (4-5-00)()

a. A log showing the type of activity claimed, sponsoring organization, duration, instructor's name, and credit units. (4-5-00)

b. Attendance verification records in the form of completion certificates or other **official** documents providing evidence of attendance **and completion.** (4-5-00)()

04. Submittal and Maintenance of Records. Copies of continuing education records

for the preceding license period shall be submitted with applications to renew licenses or permits. These records shall be maintained for a period of three (3) years and shall be available for review by the department at the request of the director. (4-5-00)

05. Insufficient Credit Units. If at the time of renewal, the applicant is unable to provide verification of the required credit units, the director will deny renewal of the driller's license or operator's permit, except as otherwise provided in the following: (4-5-00)

a. The director may withhold action on an application for renewal for a period not to exceed ninety (90) days to allow the applicant to provide verification of the required credit units. The applicant is not authorized to drill until the verification is provided and the renewal is issued. (4-5-00)

b. The director may exempt an applicant from all or part of the continuing education requirements if the applicant served on active duty in the armed forces of the United States for one hundred twenty (120) consecutive days or more during the licensing period prior to filing the application for renewal; or the applicant suffered physical disability, serious illness, or other extenuating circumstances that prevented the applicant from earning the required units. (4-5-00)

c. A licensed driller or operator who has chosen to allow his license or permit to expire or otherwise become of no effect shall be exempt from continuing education requirements unless an application for renewal is filed less than three (3) years after the license or permit expired or otherwise became of no effect. (4-5-00)

06. Out-of-State Residents. The continuing education requirements for a non-resident applicant for a license or operator's permit shall be the same as for resident applicants. (4-5-00)

07. Responsibility for Education Development and Implementation. The Idaho Ground Water Association (IGWA) is delegated responsibility to develop and implement a program for continuing education for review and approval by the director. (4-5-00)

071. CONTINUING EDUCATION COMMITTEE ~~(CEC)~~ CONTINGENCY PLAN (RULE 71).

Should the ~~IGWA not submit a suitable program for continuing education or that program not be approved by the director the CEC shall be organized and administered as follows:~~ memorandum of understanding (MOU) and/or the contract between the department and the IGWA be breached, revoked, or not renewed, the CEC shall be organized and administered by the department. (4-5-00)()

~~**01. Purpose and Duties.** The CEC shall provide recommendations to the director concerning the amount and nature of continuing education required to maintain and improve driller and operator competency. The CEC shall provide recommendations to the director concerning the credit value to be assigned to continuing education opportunities. The CEC shall also encourage driller association(s) and the education and professional communities to make additional opportunities available. The director shall determine the value for all activities submitted to fulfill continuing education requirements.~~ (4-5-00)

~~**02. Committee Membership.** The membership of the CEC shall be selected by the~~

~~director from nominations provided by state driller association(s) and others. The CEC membership shall include:~~ (4-5-00)

~~**a.** Three (3) individuals holding or who have held an Idaho well driller's license, at least two (2) of which shall hold a currently valid license.~~ (4-5-00)

~~**b.** One (1) individual from the department.~~ (4-5-00)

~~**c.** One (1) individual from either the higher education community or a consulting firm involved in designing wells.~~ (4-5-00)

~~**03. Terms.** The committee members will be appointed to serve a term of two (2) or three (3) years, but may serve no more than six (6) years in any given ten (10) year period.~~ (4-5-00)

~~**04. Reimbursement.** Travel and per diem expenses for members attending official meetings of the CEC will be paid in accordance with department policy. The department will establish meeting dates and locations for the CEC.~~ (4-5-00)

072. -- 079. (RESERVED).

080. DRILLER'S ADVISORY COMMITTEE (RULE 80).

01. Selection and Duties. The Director may appoint a driller's advisory committee from the list of drillers holding valid licenses. The Director will solicit appointment recommendations from the IGWA and other licensed drillers. The Director will determine the term of appointment for members of the committee. The committee shall provide recommendations and suggestions concerning revision of these rules, the minimum standards for well construction, significant violations and other matters regarding well drilling. The committee members shall serve on a voluntary basis without compensation. The department will hold at least one (1) meeting of the advisory committee per year and will hold additional meetings as needed at the discretion of the Director. (4-5-00)()

02. Reimbursement. Travel costs shall be paid to members of the advisory committee for travel and per diem and for costs associated with attendance of advisory committee meetings held by the department. Reimbursement shall be based on existing department policy covering travel and per diem expenses. (4-5-00)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-first Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the [Idaho Administrative Bulletin, September 1, 2010, Vol. 10-9, pages 445 through 469](#). After consideration of public comments, the rule has been revised at Sections 010 and 052. The remainder of the rule has been adopted as proposed. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/water/58_0102_1001_pending.cfm or by contacting the undersigned.

In addition, two documents providing assistance in understanding and achieving compliance with the requirements of these rules can be obtained at http://www.deq.idaho.gov/rules/water/58_0102_1001_pending.cfm. These documents are titled “Antidegradation Implementation Scenarios” and “Examples of New and Increased Discharge.”

IDAHO CODE SECTION 39-107D STATEMENT: The standards included in this rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

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: Implementation of this rule is estimated to annually require 1.6 FTE DEQ staff time at a cost of approximately \$145,500 in current dollars. In addition, one time startup costs for staff training are estimated to be about \$16,500. The workload strategy at this time is for the DEQ regional office surface water quality staff assigned to conduct Clean Water Act Section 401 Water Quality Certifications to implement the antidegradation rules in coordination with a state office water quality standards staff person. Existing surface water quality work such as monitoring and assessments will be reduced in order to shift duties to antidegradation review and analysis.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Don Essig at don.essig@deq.idaho.gov, (208)373-0119.

Dated this 12th day of November, 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

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before September 17, 2010. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The Clean Water Act requires Idaho to protect the existing uses of all state waters and to protect high quality waters from degradation that, upon public review, is not necessary and important.

This is known as antidegradation. Federal law requires the state to have both an antidegradation policy and methods to implement the policy. Although Idaho has an antidegradation policy in rule, there are no procedures in the rules on how to implement the antidegradation policy.

In September 2009, the U.S. Environmental Protection Agency (EPA) was given a 60-day notice of intent to sue by the Idaho Conservation League over EPA's failure, in oversight of Idaho's water quality rules, to require Idaho to identify its antidegradation implementation procedure. If Idaho does not act, EPA may be forced to act, and this may result in a federal rule requiring antidegradation review. DEQ initiated negotiated rulemaking in an effort to forestall the pending legal action against EPA that would force EPA to take action with respect to Idaho's rule. DEQ held six rulemaking meetings in developing this proposed rule and intends to develop supporting guidance.

DEQ proposes to revise its Water Quality Standards, IDAPA 58.01.02, to include

procedures for implementing efforts to limit degradation of water quality. This proposed rule addresses:

1. Activities subject to antidegradation review;
2. Definition of degradation and impairment and the information needed to determine them;
3. How it is decided where each of the three levels of protection from degradation is applied;
4. Exemptions to antidegradation review;
5. Determination of insignificant discharges not warranting analysis of their degradation to high quality water;
6. How DEQ will evaluate changes in water quality;
7. Waste treatment alternatives analysis to identify least degrading option for significant degradation of high quality water;
8. Socioeconomic analysis needed to justify degradation of high quality water; and
9. What is needed to document existing sources of pollution are meeting required controls.

Idahoans that recreate in, drink from, or fish Idaho's surface waters and all who discharge pollutants to those same waters 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.

Please note that language in proposed rule Subsection 052.10 is existing language that has been moved from Section 055, Outstanding Resource Waters, and Subsection 350.04., Restriction of Nonpoint Source Activities on Outstanding Resource Waters. With the exception of Subsection 052.10.g. and a few nonsubstantive revisions, the proposed text is the same as that found in Section 055 and Subsection 350.04 of the existing rules.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the November 2010 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon the adjournment of the 2011 legislative session if adopted by the Board and approved by the Legislature.

NEGOTIATED RULEMAKING: The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 58.01.23.810-815.

On April 7, 2010, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 10-4, pages 26 through 27, and a preliminary draft rule was made available for public review. Meetings were held on April 22, May 12, June 2, June 15, July 8, and July 21, 2010. Members of the public participated in this negotiated rulemaking process by attending the meetings and submitting written comments. A record of the negotiated rule drafts, written comments received, and documents distributed during the negotiated rulemaking process is available at http://www.deq.idaho.gov/rules/water/58_0102_1001_proposed.cfm.

IDAHO CODE SECTION 39-107D STATEMENT: The standards included in this proposed rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

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:

Implementation of this rule is estimated to annually require 1.6 FTE DEQ staff time at a cost of approximately \$145,500 in current dollars. In addition, one time startup costs for staff training are estimated to be about \$16,500. The workload strategy at this time is for the DEQ regional office surface water quality staff assigned to conduct Clean Water Act Section 401 Water Quality Certifications to implement the antidegradation rules in coordination with a state office water quality standards staff person. Existing surface water quality work such as monitoring and assessments will be reduced in order to shift duties to antidegradation review and analysis.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Don Essig at don.essig@deq.idaho.gov, (208)373-0119.

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 October 1, 2010.

DATED this 30th day of July, 2010.

THE FOLLOWING IS THE TEXT FOR DOCKET NO. 58-0102-1001

010. DEFINITIONS.

For the purpose of the rules contained in IDAPA 58.01.02, "Water Quality Standards," the following definitions apply: (4-11-06)

01. Activity. *For purposes of antidegradation review, an activity that causes a discharge to a water subject to the jurisdiction of the Clean Water Act.* ()

02. Acute. A stimulus severe enough to induce a rapid response. In aquatic toxicity tests, acute refers to a single or short-term (i.e., ninety-six (96) hours or less) exposure to a concentration of a toxic substance or effluent which results in death to fifty percent (50%) of the test organisms. When referring to human health, an acute effect is not always measured in terms

of lethality. (3-30-07)

03. Acute Criteria. Unless otherwise specified in these rules, the maximum instantaneous or one (1) hour average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from acute toxicity due to exposure to the toxic substance or effluent. Acute criteria are expected to adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. This is also known as the Criterion Maximum Concentration (CMC). There are no specific acute criteria for human health; however, the human health criteria are based on chronic health effects and are expected to adequately protect against acute effects. (3-30-07)

04. Aquatic Species. Any plant or animal that lives at least part of its life in the water column or benthic portion of waters of the state. (8-24-94)

05. Assigned Criteria. *Criteria associated with beneficial uses from Section 100 of these rules.* ()

046. Background. The biological, chemical or physical condition of waters measured at a point immediately upstream (up-gradient) of the influence of an individual point or nonpoint source discharge. If several discharges to the water exist or if an adequate upstream point of measurement is absent, the Department will determine where background conditions should be measured. (8-24-94)

057. Basin Advisory Group. No less than one (1) advisory group named by the Director, in consultation with the designated agencies, for each of the state's six (6) major river basins which shall generally advise the Director on water quality objectives for each basin, work in a cooperative manner with the Director to achieve these objectives, and provide general coordination of the water quality programs of all public agencies pertinent to each basin. Each basin advisory group named by the Director shall reflect a balanced representation of the interests in the basin and shall, where appropriate, include representatives from each of the following: agriculture, mining, nonmunicipal point source discharge permittees, forest products, local government, livestock, Indian tribes (for areas within reservation boundaries), water-based recreation, and environmental interests. (3-20-97)

068. Beneficial Use. Any of the various uses which may be made of the water of Idaho, including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, navigation, recreation in and on the water, wildlife habitat, and aesthetics. The beneficial use is dependent upon actual use, the ability of the water to support a non-existing use either now or in the future, and its likelihood of being used in a given manner. The use of water for the purpose of wastewater dilution or as a receiving water for a waste treatment facility effluent is not a beneficial use. (8-24-94)

079. Best Management Practice. A practice or combination of practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals. (3-20-97)

0810. Bioaccumulation. The process by which a compound is taken up by, and accumulated in the tissues of an aquatic organism from the environment, both from water and through food. (8-24-94)

0911. Biological Monitoring or Biomonitoring. The use of a biological entity as a detector and its response as a measure to determine environmental conditions. Toxicity tests and biological surveys, including habitat monitoring, are common biomonitoring methods. (8-24-94)

102. Board. The Idaho Board of Environmental Quality. (7-1-93)

113. Chronic. A stimulus that persists or continues for a long period of time relative to the life span of an organism. In aquatic toxicity tests, chronic refers to continuous exposure to a concentration of a toxic substance or effluent which results in mortality, injury, reduced growth, impaired reproduction, or other adverse effect to aquatic organisms. The test duration is long enough that sub-lethal effects can be reliably measured. When referring to human health, a chronic effect is usually measured in terms of estimated changes in rates (# of cases/ 1000 persons) of illness over a lifetime of exposure. (3-30-07)

124. Chronic Criteria. Unless otherwise specified in these rules, the four (4) day average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from chronic toxicity due to exposure to the toxic substance or effluent. Chronic criteria are expected to adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. This is also known as the Criterion Continuous Concentration (CCC). Human health chronic criteria are based on lifetime exposure. (3-30-07)

135. Compliance Schedule or Schedule Of Compliance. A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard. (8-24-94)

16. Cost-Effective and Reasonable Best Management Practices (BMPs) for Nonpoint Sources. All approved BMPs specified in Subsections 350.03 and 055.07 of these rules. BMPs for activities not specified are, in accordance with Section 350, determined on a case-by-case basis. ()

147. Daily Maximum (Minimum). The highest (lowest) value measured during one (1) calendar day or a twenty-four (24) hour period, as appropriate. For ambient monitoring of dissolved oxygen, pH, and temperature, multiple measurements should be obtained at intervals short enough that the difference between consecutive measurements around the daily maximum (minimum) is less than zero point two (0.2) ppm for dissolved oxygen, zero point one (0.1) SU for pH, or zero point five (0.5) degree C for temperature. (3-30-07)

158. Daily Mean. The average of at least two (2) appropriately spaced measurements, acceptable to the Department, calculated over a period of one (1) day: (3-20-97)

a. Confidence bounds around the point estimate of the mean may be required to determine the sample size necessary to calculate a daily mean; (8-24-94)

b. If any measurement is greater or less than five-tenths (0.5) times the average, additional measurements over the one-day period may be needed to obtain a more representative average; (3-20-97)

c. In calculating the daily mean for dissolved oxygen, values used in the calculation shall not exceed the dissolved oxygen saturation value. If a measured value exceeds the dissolved oxygen saturation value, then the dissolved oxygen saturation value will be used in calculating the daily mean. (8-24-94)

d. For ambient monitoring of temperature, the daily mean should be calculated from equally spaced measurements, at intervals such that the difference between any two (2) consecutive measurements does not exceed one point zero (1.0) degree C. (3-30-07)

19. Degradation or Lower Water Quality. For purposes of antidegradation review, degradation or lower water quality means a change in a pollutant that is adverse to *designated or existing uses as calculated upon appropriate mixing of the discharge and receiving water.* ()

1620. Deleterious Material. Any nontoxic substance which may cause the tainting of edible species of fish, taste and odors in drinking water supplies, or the reduction of the usability of water without causing physical injury to water users or aquatic and terrestrial organisms. (8-24-94)

1721. Department. The Idaho Department of Environmental Quality. (7-1-93)

1822. Design Flow. The critical flow used for steady-state wasteload allocation modeling. (8-24-94)

1923. Designated Agency. The department of lands for timber harvest activities, oil and gas exploration and development, and mining activities; the soil conservation commission for grazing and agricultural activities; the transportation department for public road construction; the department of agriculture for aquaculture; and the Department's division of environmental quality for all other activities. (3-20-97)

204. Designated Beneficial Use or Designated Use. Those beneficial uses assigned to identified waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," Sections 110 through 160, whether or not the uses are being attained. (4-5-00)

215. Desirable Species. Species indigenous to the area or those introduced species identified as desirable by the Idaho Department of Fish and Game. (3-15-02)

226. Director. The Director of the Idaho Department of Environmental Quality or his authorized agent. (7-1-93)

237. Discharge. When used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. *For purposes of antidegradation review, means "discharge" as used in Section 401 of the Clean Water Act.* (8-24-94)()

248. Dissolved Oxygen (DO). The measure of the amount of oxygen dissolved in the water, usually expressed in mg/l. (7-1-93)

259. Dissolved Product. Petroleum product constituents found in solution with water. (8-24-94)

2630. Dynamic Model. A computer simulation model that uses real or derived time series data to predict a time series of observed or derived receiving water concentrations. Dynamic modeling methods include continuous simulation, Monte Carlo simulations, lognormal probability modeling, or other similar statistical or deterministic techniques. (8-24-94)

2731. E. coli (Escherichia coli). A common fecal and intestinal organism of the coliform group of bacteria found in warm-blooded animals. (4-5-00)

2832. Effluent. Any wastewater discharged from a treatment facility. (7-1-93)

2933. Effluent Biomonitoring. The measurement of the biological effects of effluents (e.g., toxicity, biostimulation, bioaccumulation, etc.). (8-24-94)

304. EPA. The United States Environmental Protection Agency. (7-1-93)

315. Ephemeral Waters. A stream, reach, or water body that flows naturally only in direct response to precipitation in the immediate watershed and whose channel is at all times above the water table. (4-11-06)

36. Existing Activity or Discharge. An activity or discharge that has been previously authorized or did not previously require authorization. ()

327. Existing Beneficial Use Or Existing Use. Those beneficial uses actually attained in waters on or after November 28, 1975, whether or not they are designated for those waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards." (4-11-06)

338. Facility. As used in Section 850 only, any building, structure, installation, equipment, pipe or pipeline, well pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft, area, place or property from which an unauthorized release of hazardous materials has occurred. (8-24-94)

349. Four Day Average. The average of all measurements within a period of ninety-six (96) consecutive hours. While a minimum of one (1) measurement per each twenty-four (24) hours is preferred, for toxic chemicals in Section 210, any number of data points is acceptable. (3-30-07)

3540. Free Product. A petroleum product that is present as a nonaqueous phase liquid. Free product includes the presence of petroleum greater than one-tenth (0.1) inch as measured on the water surface for surface water or the water table for ground water. (7-1-93)

3641. Full Protection, Full Support, or Full Maintenance of Designated Beneficial Uses of Water. Compliance with those levels of water quality criteria listed in Sections 200, 210, 250, 251, 252, 253, and 275 (if applicable) or where no major biological group such as fish, macroinvertebrates, or algae has been modified by human activities significantly beyond the natural range of the reference streams or conditions approved by the Director in consultation with the appropriate basin advisory group. (3-15-02)

3742. Geometric Mean. The geometric mean of “n” quantities is the “nth” root of the product of the quantities. (7-1-93)

3843. Ground Water. Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (3-30-07)

3944. Harmonic Mean Flow. The number of daily flow measurements divided by the sum of the reciprocals of the flows (i.e., the reciprocal of the mean of reciprocals). (8-24-94)

405. Hazardous Material. A material or combination of materials which, when discharged in any quantity into state waters, presents a substantial present or potential hazard to human health, the public health, or the environment. Unless otherwise specified, published guides such as Quality Criteria for Water (1976) by EPA, Water Quality Criteria (Second Edition, 1963) by the state of California Water Quality Control Board, their subsequent revisions, and more recent research papers, regulations and guidelines will be used in identifying individual and specific materials and in evaluating the tolerances of the identified materials for the beneficial uses indicated. (7-1-93)

46. Highest Statutory and Regulatory Requirements for Point Sources. All applicable effluent limits required by the Clean Water Act and other permit conditions. It also includes any compliance schedules or consent orders requiring measures to achieve applicable effluent limits and other permit conditions required by the Clean Water Act. ()

417. Hydrologic Unit Code (HUC). A unique eight (8) digit number identifying a subbasin. A subbasin is a United States Geological Survey cataloging unit comprised of water body units. (4-5-00)

428. Hydrologically-Based Design Flow. A statistically derived receiving water design flow based on the selection and identification of an extreme value (e.g., 1Q10, 7Q10). The underlying assumption is that the design flow will occur X number of times in Y years, and limits the number of years in which one (1) or more excursions below the design flow can occur. (8-24-94)

439. Hypolimnion. The bottom layer in a thermally-stratified body of water. It is fairly uniform in temperature and lays beneath a zone of water which exhibits a rapid temperature drop with depth such that mixing with overlying water is inhibited. (3-30-07)

50. Integrated Report. Refers to the consolidated listing and reporting of the state's water quality status pursuant to Sections 303(d), 305(b), and 314 of the Clean Water Act. ()

4451. Inter-Departmental Coordination. Consultation with those agencies responsible

for enforcing or administering the practices listed as approved best management practices in Subsection 350.03. (7-1-93)

452. Intermittent Waters. A stream, reach, or water body which naturally has a period of zero (0) flow for at least one (1) week during most years. Where flow records are available, a stream with a 7Q2 hydrologically-based unregulated flow of less than one-tenth (0.1) cubic feet per second (cfs) is considered intermittent. Streams with natural perennial pools containing significant aquatic life uses are not intermittent. (4-11-06)

4653. LC-50. The toxicant concentration killing fifty percent (50%) of exposed organisms at a specific time of observation (e.g., ninety-six (96) hours). (3-20-97)

4754. Load Allocation (LA). The portion of a receiving water's loading capacity that is attributed either to one (1) of its existing or future nonpoint sources of pollution or to natural background sources. (8-24-94)

4855. Loading Capacity. The greatest amount of pollutant loading that a water can receive without violating water quality standards. (8-24-94)

~~**49. Lower Water Quality.** A measurable and adverse anthropogenic change in a chemical, physical, or biological parameter of water relevant to a beneficial use, and which can be expressed numerically. Measurable change may be determined by a statistically significant difference using standard methods for analysis and statistical interpretation appropriate to the parameter. Statistical significance is defined as the ninety-five percent (95%) confidence limit when significance is not otherwise defined for the parameter in standard methods or practices. (3-30-07)~~

506. Lowest Observed Effect Concentration (LOEC). The lowest concentration of a toxic substance or an effluent that results in observable adverse effects in the aquatic test population. (3-30-07)

517. Man-Made Waterways. Canals, flumes, ditches, wasteways, drains, laterals, and/or associated features, constructed for the purpose of water conveyance. This may include channels modified for such purposes prior to November 28, 1975. These waterways may have uniform and rectangular cross-sections, straight channels, follow rather than cross topographic contours, be lined to reduce water loss, and be operated or maintained to promote water conveyance. (3-30-07)

528. Maximum Weekly Maximum Temperature (MWMT). The weekly maximum temperature (WMT) is the mean of daily maximum temperatures measured over a consecutive seven (7) day period ending on the day of calculation. When used seasonally, e.g., spawning periods, the first applicable WMT occurs on the seventh day into the time period. The MWMT is the single highest WMT that occurs during a given year or other period of interest, e.g., a spawning period. (3-30-07)

539. Milligrams Per Liter (mg/l). Milligrams of solute per liter of solution, equivalent to parts per million, assuming unit density. (7-1-93)

5460. Mixing Zone. A defined area or volume of the receiving water surrounding or adjacent to a wastewater discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards. It is considered a place where wastewater mixes with receiving water and not as a place where effluents are treated. (7-1-93)

5561. National Pollutant Discharge Elimination System (NPDES). Point source permitting program established pursuant to Section 402 of the federal Clean Water Act. (8-24-94)

562. Natural Background Conditions. The physical, chemical, biological, or radiological conditions existing in a water body without human sources of pollution within the watershed. Natural disturbances including, but not limited to, wildfire, geologic disturbance, diseased vegetation, or flow extremes that affect the physical, chemical, and biological integrity of the water are part of natural background conditions. Natural background conditions should be described and evaluated taking into account this inherent variability with time and place. (3-30-07)

5763. Nephelometric Turbidity Units (NTU). A measure of turbidity based on a comparison of the intensity of the light scattered by the sample under defined conditions with the intensity of the light scattered by a standard reference suspension under the same conditions. (8-24-94)

64. New Activity or Discharge. *An activity or discharge that has not been previously authorized. Existing activities or discharges not currently permitted or licensed will be presumed to be new unless the Director determines to the contrary based on review of available evidence. An activity or discharge that has previously taken place without need for a license or permit is not a new activity or discharge when first licensed or permitted.* ()

5865. Nonpoint Source Activities. Activities on a geographical area on which pollutants are deposited or dissolved or suspended in water applied to or incident on that area, the resultant mixture being discharged into the waters of the state. Nonpoint source activities on ORWs do not include issuance of water rights permits or licenses, allocation of water rights, operation of diversions, or impoundments. Nonpoint sources activities include, but are not limited to: (3-20-97)

- a. Irrigated and nonirrigated lands used for: (7-1-93)
 - i. Grazing; (7-1-93)
 - ii. Crop production; (7-1-93)
 - iii. Silviculture; (7-1-93)
- b. Log storage or rafting; (7-1-93)
- c. Construction sites; (7-1-93)
- d. Recreation sites; (3-20-97)

- e. Septic tank disposal fields. (8-24-94)
- f. Mining; (3-20-97)
- g. Runoff from storms or other weather related events; and (3-20-97)
- h. Other activities not subject to regulation under the federal national pollutant discharge elimination system. (3-20-97)

5966. Nuisance. Anything which is injurious to the public health or an obstruction to the free use, in the customary manner, of any waters of the state. (7-1-93)

607. Nutrients. The major substances necessary for the growth and reproduction of aquatic plant life, consisting of nitrogen, phosphorus, and carbon compounds. (7-1-93)

618. One Day Minimum. The lowest daily instantaneous value measured. (3-20-97)

6269. One Hour Average. The mean of at least two (2) appropriately spaced measurements, as determined by the Department, calculated over a period of one (1) hour. When three (3) or more measurements have been taken, and if any measurement is greater or less than five-tenths (0.5) times the mean, additional measurements over the one-hour period may be needed to obtain a more representative mean. (3-20-97)

6370. Operator. For purposes of Sections 851 and 852, any person presently or who was at any time during a release in control of, or having responsibility for, the daily operation of the petroleum storage tank (PST) system. (4-2-03)

6471. Outstanding Resource Water (ORW). A high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been designated by the legislature and subsequently listed in this chapter. ORW constitutes an outstanding national or state resource that requires protection from point and nonpoint source activities that may lower water quality. (3-20-97)

6572. Outstanding Resource Water Mixing Zone. An area or volume of an ORW where pollutants are allowed to mix with the ORW receiving water at a location distinct from the sampling point where compliance with ORW quality standards is measured. An ORW mixing zone will be downstream from the discharge of a tributary or a segment immediately upstream which contains man caused pollutants as a result of nonpoint source activities occurring on that tributary or segment. As a result of the discharge, the mixing zone may not meet all water quality standards applicable to the ORW, but shall still be protected for existing beneficial uses. The Department, after consideration of input from interested parties, will determine the size, configuration and location of mixing zones which are necessary to meet the requirements of this chapter. (7-1-93)

6673. Owner. For purposes of Sections 851 and 852, any person who owns or owned a petroleum storage tank (PST) system any time during a release and the current owner of the property where the PST system is or was located. (4-2-03)

74. Permit or License. A permit or license for an activity that is subject to certification by the state under Section 401 of the Clean Water Act, including, for example, NPDES permits, dredge and fill permits, and FERC licenses. ()

675. Person. An individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state or federal agency, department or instrumentality, special district, interstate body or any legal entity, which is recognized by law as the subject of rights and duties. (3-20-97)

6876. Petroleum Products. Products derived from petroleum through various refining processes. (7-1-93)

6977. Petroleum Storage Tank (PST) System. Any one (1) or combination of storage tanks or other containers, including pipes connected thereto, dispensing equipment, and other connected ancillary equipment, and stationary or mobile equipment, that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. (7-1-93)

708. Point Source. Any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (7-1-93)

719. Pollutant. Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, unitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged to water in excessive quantities, cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities. (3-20-97)

7280. Project Plans. Documents which describe actions to be taken under a proposed activity. These documents include environmental impact statements, environmental assessments, and other land use or resource management plans. (7-1-93)

7381. Public Swimming Beaches. Areas indicated by features such as signs, swimming docks, diving boards, slides, or the like, boater exclusion zones, map legends, collection of a fee for beach use, or any other unambiguous invitation to public swimming. Privately owned swimming docks or the like which are not open to the general public are not included in this definition. (4-11-06)

7482. Receiving Waters. Those waters which receive pollutants from point or nonpoint sources. (7-1-93)

7583. Reference Stream or Condition. A water body which represents the minimum conditions necessary to fully support the applicable designated beneficial uses as further specified

in these rules, or natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin. In highly mineralized areas or in the absence of such reference streams or water bodies, the Director, in consultation with the basin advisory group and the technical advisors to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported. (3-20-97)

7684. Release. Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. (8-24-94)

7785. Resident Species. Those species that commonly occur in a site including those that occur only seasonally or intermittently. This includes the species, genera, families, orders, classes, and phyla that: (8-24-94)

- a. Are usually present at the site; (8-24-94)
- b. Are present only seasonally due to migration; (8-24-94)
- c. Are present intermittently because they periodically return or extend their ranges into the site; (8-24-94)
- d. Were present at the site in the past but are not currently due to degraded conditions, and are expected to be present at the site when conditions improve; and (8-24-94)
- e. Are present in nearby bodies of water but are not currently present at the site due to degraded conditions, and are expected to be present at the site when conditions improve. (8-24-94)

786. Responsible Persons in Charge. Any person who: (8-24-94)

- a. By any acts or omissions, caused, contributed to or exacerbated an unauthorized release of hazardous materials; (8-24-94)
- b. Owns or owned the facility from which the unauthorized release occurred and the current owner of the property where the facility is or was located; or (8-24-94)
- c. Presently or who was at any time during an unauthorized release in control of, or had responsibility for, the daily operation of the facility from which an unauthorized release occurred. (8-24-94)

7987. Sediment. Undissolved inorganic matter. (3-30-07)

808. Seven Day Mean. The average of the daily mean values calculated over a period of seven (7) consecutive days. (3-20-97)

819. Sewage. The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. (8-24-94)

8290. Short-Term or Temporary Activity. An activity which is as short as possible but lasts for no more than one (1) year, is limited in scope and is expected to have only minimal impact on water quality as determined by the Director. Short-term or temporary activities include, but are not limited to, those activities described in Subsection 080.02. (3-30-07)

8391. Silviculture. Those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber. (3-20-97)

8492. Sludge. The semi-liquid mass produced by partial dewatering of potable or spent process waters or wastewater. (7-1-93)

8593. Special Resource Water. Those specific segments or bodies of water which are recognized as needing intensive protection: (7-1-93)

a. To preserve outstanding or unique characteristics; or (7-1-93)

b. To maintain current beneficial use. (7-1-93)

8694. Specialized Best Management Practices. Those practices designed with consideration of geology, land type, soil type, erosion hazard, climate and cumulative effects in order to fully protect the beneficial uses of water, and to prevent or reduce the pollution generated by nonpoint sources. (3-3-87)

8795. State. The state of Idaho. (7-1-93)

8896. State Water Quality Management Plan. The state management plan developed and updated by the Department in accordance with Sections 205, 208, and 303 of the Clean Water Act. (3-20-97)

897. Suspended Sediment. The undissolved inorganic fraction of matter suspended in surface water. (3-30-07)

908. Suspended Solids. The undissolved organic and inorganic matter suspended in surface water. (3-30-07)

919. Technology-Based Effluent Limitation. Treatment requirements under Section 301(b) of the Clean Water Act that represent the minimum level of control that must be imposed in a permit issued under Section 402 of the Clean Water Act. (8-24-94)

92100. Total Maximum Daily Load (TMDL). The sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, and natural background. Such load shall be established at a level necessary to implement the applicable water

quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

(8-24-94)

93101. Toxicity Test. A procedure used to determine the toxicity of a chemical or an effluent using living organisms. A toxicity test measures the degree of response of an exposed test organism to a specific chemical or effluent.

(8-24-94)

94102. Toxic Substance. Any substance, material or disease-causing agent, or a combination thereof, which after discharge to waters of the State and upon exposure, ingestion, inhalation or assimilation into any organism (including humans), either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, malignancy, genetic mutation, physiological abnormalities (including malfunctions in reproduction) or physical deformations in affected organisms or their offspring. Toxic substances include, but are not limited to, the one hundred twenty-six (126) priority pollutants identified by EPA pursuant to Section 307(a) of the federal Clean Water Act.

(8-24-94)

90103. Treatment. A process or activity conducted for the purpose of removing pollutants from wastewater.

(7-1-93)

96104. Treatment System. Any physical facility or land area for the purpose of collecting, treating, neutralizing or stabilizing pollutants including treatment by disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishing thereof and their appurtenances. A treatment system may also be known as a treatment facility.

(4-11-06)

97105. Twenty-Four Hour Average. The mean of at least two (2) appropriately spaced measurements, as determined by the Department, calculated over a period of twenty-four (24) consecutive hours. When three (3) or more measurements have been taken, and if any measurement is greater or less than five-tenths (0.5) times the mean, additional measurements over the twenty-four (24)-hour period may be needed to obtain a more representative mean.

(3-20-97)

98106. Unique Ecological Significance. The attribute of any stream or water body which is inhabited or supports an endangered or threatened species of plant or animal or a species of special concern identified by the Idaho Department of Fish and Game, which provides anadromous fish passage, or which provides spawning or rearing habitat for anadromous or desirable species of lake dwelling fishes.

(8-24-94)

99107. Wasteload Allocation (WLA). The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution.

(8-24-94)

1008. Wastewater. Unless otherwise specified, sewage, industrial waste, agricultural waste, and associated solids or combinations of these, whether treated or untreated, together with such water as is present.

(7-1-93)

1019. Water Body Unit. Includes all named and unnamed tributaries within a drainage and is considered a single unit unless designated otherwise.

(4-5-00)

10210. Water Pollution. Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the state, or the discharge of any pollutant into the waters of the state, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to fish and wildlife, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses. (8-24-94)

10311. Water Quality-Based Effluent Limitation. An effluent limitation that refers to specific levels of water quality that are expected to render a body of water suitable for its designated or existing beneficial uses. (8-24-94)

10412. Water Quality Limited Water Body. After monitoring, evaluation of required pollution controls, and consultation with the appropriate basin and watershed advisory groups, a water body identified by the Department, which does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards after the application of required pollution controls. A water body identified as water quality limited shall require the development of a TMDL or other equivalent process in accordance with Section 303 of the Clean Water Act and Sections 39-3601 et seq., Idaho Code. (3-20-97)

10513. Waters and Waters Of The State. All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. (7-1-93)

10614. Watershed. The land area from which water flows into a stream or other body of water which drains the area. (3-20-97)

10715. Watershed Advisory Group. An advisory group appointed by the Director, with the advice of the appropriate Basin Advisory Group, which will recommend to the Department those specific actions needed to control point and nonpoint sources of pollution affecting water quality limited water bodies within the watershed. Members of each watershed advisory group shall be representative of the industries and interests affected by the management of that watershed, along with representatives of local government and the land managing or regulatory agencies with an interest in the management of that watershed and the quality of the water bodies within it. (3-20-97)

10816. Whole-Effluent Toxicity. The aggregate toxic effect of an effluent measured directly with a toxicity test. (8-24-94)

10917. Zone of Initial Dilution (ZID). An area within a Department authorized mixing zone where acute criteria may be exceeded. This area should be as small as practicable and assure that drifting organisms are not exposed to acute concentrations for more than one (1) hour more than once in three (3) years. The actual size of the ZID will be determined by the Department for a discharge on a case-by-case basis, taking into consideration mixing zone modeling and associated size recommendations and any other pertinent chemical, physical, and biological data available. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

051. ANTIDegradation POLICY.

01. **Maintenance of Existing Uses for All Waters (Tier I Protection).** The existing in stream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. ~~(7-1-93)~~()

02. **High Quality Waters (Tier II Protection).** Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Department finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Department's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the Department shall assure water quality adequate to protect existing uses fully. Further, the Department shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and cost-effective and reasonable best management practices for nonpoint source control. In providing such assurance, the Department may enter together into an agreement with other state of Idaho or federal agencies in accordance with Sections 67-2326 through 67-2333, Idaho Code. ~~(7-1-93)~~()

03. **Outstanding Resource Waters (Tier III Protection).** Where high quality waters designated by the legislature constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected from the impacts of point and nonpoint source activities. ~~(3-20-97)~~()

04. **Thermal Discharges.** In those cases where potential water quality impairment associated with a thermal discharge is involved, antidegradation shall be implemented consistent with Section 316 of the Clean Water Act. ()

05. **Waters Subject to the Antidegradation Policy.** Idaho's antidegradation policy only applies to waters subject to the jurisdiction of the Clean Water Act. ()

052. **IMPLEMENTATION.**

The antidegradation policy shall be implemented as follows: ()

01. **Waters Protected.** All waters receive Tier I protection. Waters receiving Tier II protection will be identified using a water body by water body approach during the antidegradation review. Waters given Tier III protection are designated in law. ()

02. **Restoration Projects.** Changes in water quality may be allowed by the Department without an antidegradation review where determined necessary to secure long-term water quality improvement through restoration projects designed to trend toward natural characteristics and associated uses to a water body where those characteristics and uses have been lost or diminished. Restoration projects shall implement best management practices. ()

03. General Permits. For general permits issued on or after July 1, 2011, the Department will conduct antidegradation review, including *any required* Tier II analysis, at the time at which general permits are certified. For general permits that *the Department determines* adequately address antidegradation, review of individual applications for coverage will not be required unless it is required by the general permit. For general permits that *the Department determines* do not adequately address antidegradation, *the Department shall ensure that antidegradation is adequately addressed. To achieve this* the Department may conclude that other conditions, such as the submittal of additional information or individual certification at the time an application is submitted for coverage under a general permit, *are necessary in the general permit to provide reasonable assurance of compliance with the antidegradation policy. If supported by the permit record, the Department may also conclude that discharges authorized under a general permit are insignificant or that the pollution controls required in the general permit are the least degrading alternative as specified in Subsection 052.08.c.* ()

04. Initiation of Antidegradation Review. Review of degradation potential and application of the appropriate level of protection from degradation will be triggered by an application for a new or reissued permit or license. ()

05. Identification of Tier II Waters. The Department will utilize a water body by water body approach in determining where Tier II protection is appropriate in addition to Tier I protection. This approach shall be based on an assessment of the chemical, physical, biological, and other information regarding the water body. The most recent federally approved Integrated Report and supporting data will be used to determine the appropriate level of protection as follows: ()

a. Water bodies identified in the Integrated Report as *fully supporting assessed uses* will be provided Tier II protection. ()

b. Water bodies identified in the Integrated Report as not assessed will be provided an appropriate level of protection on a case-by-case basis using information available at the time of a proposal for a new or reissued permit or license. ()

c. Water bodies identified in the Integrated Report as not *fully supporting* will receive Tier I protection, *except* as follows: ()

i. For aquatic life uses *listed only for one or more of the following causes: dissolved oxygen, nutrients, pH, sediment, or temperature*, if biological or aquatic habitat parameters show a healthy, balanced biological community is present, as described in the "Water Body Assessment Guidance" published by the Idaho Department of Environmental Quality, then the water body shall receive Tier II protection for aquatic life. If these data are insufficient to determine a healthy, balanced biological community is present, then the water body will be provided an appropriate level of protection on a case-by-case basis using information available at the time of a proposal for a new or reissued permit or license. ()

ii. For recreational uses, if water quality data show compliance with those levels of water quality criteria listed in Sections 200, 210, 251, and 275 (where applicable), then the water body shall receive Tier II protection for recreational uses. ()

06. Evaluation of Effect of an Activity or Discharge on Water Quality. The Department will evaluate the effect on water quality for each *pollutant*. The Department will determine whether an activity or discharge results in an improvement, no change, or degradation of water quality. ()

a. Effect on water quality will be based on the calculated change in concentration in the receiving water as a result of a new or reissued permit or license. With respect to a discharge, this calculation will take into account dilution using appropriate mixing of the receiving water under critical conditions coupled with the design flow of the discharge. For a reissued permit or license, the calculated change will be the difference in water quality that would result from the activity or discharge as authorized in the current permit or license and the water quality that would result from the activity or discharge as proposed in the reissued permit or license. For a new permit or license, the calculated change will be the difference between the existing receiving water quality and water quality that would result from the activity or discharge as proposed in the new permit or license. ()

i. Current Discharge Quality. For *pollutants* that are currently limited, current discharge quality shall be based on limits in the current permit or license. For *pollutants* not currently limited, current discharge quality shall be based on available discharge quality data collected within five years of the application for a permit or license *or other relevant information*. ()

ii. Proposed Quality for an Existing Discharge. Future discharge quality shall be based on proposed permit limits. For *pollutants* not limited in the proposed permit or license, future discharge quality will be estimated from available discharge quality data since the last permit or license was issued accounting for any changes in production, treatment or operation. For the proposed discharge of a new *pollutant* or a proposed increased discharge of a *pollutant*, future discharge quality will be estimated based on information provided by the applicant or other relevant information. ()

iii. New Permit Limits for an Existing Discharge. When new permit limits are proposed for the first time for a *pollutant* in an existing discharge, then for purposes of calculating the change in water quality, any statistical procedures used to derive the proposed new limits will be applied to *past* discharge quality as well, where appropriate. ()

iv. Proposed Quality for a New Discharge. Future discharge quality shall be based on proposed permit limits. For *pollutants* not limited in the proposed permit or license, future discharge quality will be based on information provided by the applicant or other relevant information. ()

b. Receiving water quality will be the quality measured, or modeled as appropriate, immediately above the discharge for flowing waters and outside any Department authorized mixing zone for lakes and reservoirs. ()

c. Offsets. In determining the effect of an activity or discharge on water quality of Tier II or Tier III waters, the Department may take into account reductions in pollution from other sources that are tied to the proposed activity or discharge. These offsets in pollution must be

upstream of the degradation in water quality due to the proposed activity or discharge and occur before the activity or discharge is allowed to begin. The applicant seeking a permit or license for an activity or discharge based on offsets will be held responsible for assuring offsets are achieved and maintained as a condition of their permit or license. ()

07. Tier I Review. Tier I review will be performed for all new or reissued permits or licenses. Existing uses and the water quality necessary to protect the existing uses must always be maintained and protected. No degradation or lowering of water quality may be allowed that would cause or contribute to violation of water quality criteria as calculated after authorized mixing of the discharge with the receiving water. Identification of existing uses and the water quality necessary for their protection will be based on all available information, including any water quality related data and information submitted during the public comment period for the permit or license. ()

08. Tier II Analysis. A Tier II analysis will only be conducted for activities or discharges, subject to a permit or a license, that cause degradation. The Department may allow significant degradation of surface water quality that is better than assigned criteria only if it is determined to be necessary to accommodate important economic or social development in the area in which the waters are located. The process and standard for this determination are set forth below. ()

a. Insignificant Activity or Discharge. The Department shall consider the size and character of an activity or discharge or the magnitude of its effect on the receiving stream and shall determine whether it is insignificant. If an activity or discharge is determined to be insignificant, then no further Tier II analysis, as set forth in Subsections 052.08.b., 052.08.c., and 052.08.d., shall be required. ()

i. The Department shall determine insignificance when the proposed change in an activity or discharge, from conditions as of July 1, 2011: ()

(1) Will not increase ambient concentrations by more than ten percent (10%); and ()

(2) Will not cumulatively decrease assimilative capacity by more than ten percent (10%). ()

ii. The Department reserves the right to request additional information from the applicant in making a determination a proposed change in an activity or discharge is insignificant. ()

b. Other Source Controls. In allowing any degradation of high water quality, the Department must assure that there shall be achieved in the watershed the highest statutory and regulatory requirements for all new and existing point sources and cost-effective and reasonable best management practices for all nonpoint source controls. In providing such assurance, the Department may enter together into an agreement with other State of Idaho or federal agencies in accordance with Sections 67-2326 through 67-2333, Idaho Code. ()

c. Alternatives Analysis. Degradation will be deemed necessary only if there are no

reasonable alternatives to discharging at the levels proposed. The applicant seeking authorization to degrade high water quality must provide an analysis of alternatives aimed at selecting the best combination of site, structural, managerial and treatment approaches that can be reasonably implemented to avoid or minimize the degradation of water quality. To identify the least degrading alternative that is reasonable, the following principles shall be followed: ()

i. Controls to avoid or minimize degradation should be considered at the earliest possible stage of project design. ()

ii. Alternatives that must be evaluated *as appropriate, are:* ()

(1) Relocation or configuration of outfall or diffuser; ()

(2) Process changes/improved efficiency that reduces pollutant discharge; ()

(3) Seasonal discharge to avoid critical time periods for water quality; ()

(4) Non-discharge alternatives such as land application; and ()

(5) Offsets to the activity or discharge's effect on water quality. ()

iii. The Department retains the discretion to require the applicant to examine specific alternatives or provide additional information to conduct the analysis. ()

iv. In selecting the preferred alternative the applicant shall: ()

(1) Evaluate economic impacts (total cost effectiveness, incremental cost effectiveness) of all technologically feasible alternatives; ()

(2) Rank all technologically feasible treatment alternatives by their cost effectiveness at pollutant reduction; ()

(3) Consider the environmental costs and benefits across media and between pollutants; and ()

(4) Select the least degrading option or show that a more degrading alternative is justified based on Subsections 052.08.c.iv.(1), 052.08.c.iv.(2), or 052.08.c.iv.(3) above. ()

d. Socioeconomic Justification. Degradation of water quality deemed necessary must also be determined by the Department to accommodate important economic or social development. Therefore, the applicant seeking authorization to degrade water quality must at a minimum identify the important economic or social development for which lowering water quality is necessary and should use the following steps to demonstrate this: ()

i. Identify the affected community; ()

ii. Describe the important social or economic development associated with the activity which can include cleanup/restoration of a closed facility; ()

iii. Identify the relevant social, economic and environmental health benefits and costs associated with the proposed degradation in water quality for the preferred alternative. Benefits and costs that must be analyzed include, but are not limited to: ()

(1) Economic benefits to the community such as changes in employment, household incomes and tax base; ()

(2) Provision of necessary services to the community; ()

(3) Potential health impacts related to the proposed activity; ()

(4) Impacts to direct and indirect uses associated with high quality water, e.g., fishing, recreation, and tourism; and ()

(5) Retention of assimilative capacity for future activities or discharges. ()

iv. Factors identified in the socioeconomic justification should be quantified whenever possible but for those factors that cannot be quantified a qualitative description of the impacts may be accepted; and ()

v. If the Department determines that more information is required, then the Department may require the applicant to provide further information or seek additional sources of information. ()

e. Process. ()

i. Analysis. The Department in cooperation with State of Idaho designated management agencies and/or federal agencies will collect information regarding the other source controls specified in Subsection 052.08.b. The applicant for a new or reissued permit or license is responsible for providing information pertinent to determining significance/insignificance of proposed changes in water quality and completing an alternatives analysis and socioeconomic justification as appropriate and submitting them to the Department for review. ()

ii. Departmental review. The Department shall review all pertinent information and, after intergovernmental coordination, public notice and input, make a determination as to whether there is assurance that the other source controls specified in Subsection 052.08.b. shall be achieved, and whether degradation of water quality is necessary to accommodate important economic or social development. ()

iii. Public Involvement. The Department will satisfy the public participation provisions of Idaho's continuing planning process. Public notice and review of antidegradation will be coordinated with existing 401 certification notices for public review. ()

09. Tier III - Outstanding Resource Waters (ORWs). ORWs are designated by the legislature. Subsection 052.09 describes the nomination, public notice and comment, public hearing, and board review process for directing the Department to develop legislation designating ORWs. Only the legislature may designate ORWs. Once designated by the legislature, the ORWs

are listed in these rules. ()

a. Nominations. Any person may request, in writing to the board, that a stream segment be considered for designation as an Outstanding Resource Water. To be considered for ORW designation, nominations must be received by the board by April 1 or ten (10) days after the adjournment sine die of that year's regular session of the legislature, whichever is later, for consideration during the next regular session of the legislature. All nominations shall be addressed to:

Idaho Board of Environmental Quality
Department of Environmental Quality
Outstanding Resource Water Nomination
1410 N. Hilton
Boise, Idaho 83706-1255

The nomination shall include the following information: ()

- i. The name, description and location of the stream segment; ()
- ii. The boundaries upstream and downstream of the stream segment; ()
- iii. An explanation of what makes the segment a candidate for the designation; ()
- iv. A description of the existing water quality and any technical data upon which the description is based as can be found in the most current basin status reports; ()
- v. A discussion of the types of nonpoint source activities currently being conducted that may lower water quality, together with those activities that are anticipated during the next two (2) years, as described in the most current basin status reports; and ()
- vi. Any additional evidence to substantiate such a designation. ()

b. Public Notice and Public Comment. The board will give public notice that one (1) or more stream segments are being considered for recommendation to the legislature as outstanding resource waters. Public notice will also be given if a public hearing is being held. Public comments regarding possible designation will be accepted by the board for a period of at least forty-five (45) days. Public comments may include, but are not limited to, discussion of socioeconomic considerations; fish, wildlife or recreational values; and other beneficial uses. ()

c. Public Hearing. A public hearing(s) may be held at the board's discretion on any stream segment nominated for ORW designation. Public notice will be given if a hearing is held. The decision to hold a hearing may be based on the following criteria: ()

- i. One (1) or more requests contain supporting documentation and valid reasons for designation; ()
- ii. A stream segment is generally recognized as constituting an outstanding national

resource, such as waters of national and state parks, and wildlife refuges; ()

iii. A stream segment is generally recognized as waters of exceptional recreational or ecological significance; ()

iv. The board shall give special consideration to holding a hearing and to recommending for designation by the legislature, waters which meet criteria found in Subsections 052.09.c.ii. and 052.09.c.iii.; ()

v. Requests for a hearing will be given due consideration by the board. Public hearings may be held at the board's discretion. ()

d. Board Review. The board shall review the stream segments nominated for ORW designation and based on the hearing or other written record, determine the segments to recommend as ORWs to the legislature. The board shall submit a report for each stream segment it recommends for ORW designation. The report shall contain the information specified in Subsection 052.09.a. and information from the hearing record or other written record concerning the impacts the designation would have on socioeconomic conditions; fish, wildlife and recreational values; and other beneficial uses. The Department shall then prepare legislation for each segment that will be recommended to the legislature as an ORW. The legislation shall provide for the listing of designated segments in these rules without the need for formal rulemaking procedures, pursuant to Sections 67-5201, et seq., Idaho Code. ()

e. Designated Waters. Those stream segments designated by the legislature as ORWs are listed in Sections 110 through 160. ()

f. Restriction of Nonpoint Source Activities on ORWs. Nonpoint source activities on ORWs shall be restricted as follows: ()

i. The water quality of ORWs shall be maintained and protected. After the legislature has designated a stream segment as an outstanding resource water, no person shall conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of that ORW, except for conducting short term or temporary nonpoint source activities which do not alter the essential character or special uses of a segment, allocation of water rights, or operation of water diversions or impoundments. Stream segments not designated as ORWs that discharge directly into an ORW shall not be subject to the same restrictions as an ORW, nor shall the ORW mixing zone be subject to the same restrictions as an ORW. A person may conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of a tributary or stream segment, which discharges directly into an ORW or an ORW mixing zone, provided that the water quality of that ORW below the mixing zone shall not be lowered. ()

ii. After the legislature has designated a stream segment as an outstanding resource water as outlined in Subsection 052.09.e., existing nonpoint source activities may continue and shall be conducted in a manner that maintains and protects the current water quality of an ORW. The provisions of this section shall not affect short term or temporary activities that do not alter the essential character or special uses of a segment, allocation of water rights, or operations of water diversions or impoundments, provided that such activities shall be conducted in

conformance with applicable laws and regulations. ()

g. Restriction of Point Source Discharges to ORWs. The water quality of ORWs shall be maintained and protected. Point source discharges that may cause degradation to ORWs may be allowed only if they are offset by reductions in other discharges per Subsection 052.06.c. ()

0523. PUBLIC PARTICIPATION.

In providing general coordination of water quality programs within each basin, in carrying out the duties of the Basin Advisory Groups as assigned, and in carrying out the provisions of Sections 39-3601, et seq., Idaho Code, the Director and the Basin Advisory Groups shall employ all means of public involvement deemed necessary, including the public involvement required under Section 67-2340 through Section 67-2347, Idaho Code, Section 051 of this rule or required in Chapter 52, Title 67, Idaho Code, and shall cooperate fully with the public involvement or planning processes of other appropriate public agencies. (3-20-97)

0534. BENEFICIAL USE SUPPORT STATUS.

In determining whether a water body fully supports designated and existing beneficial uses, the Department shall determine whether all of the applicable water quality standards are being achieved, including any criteria developed pursuant to these rules, and whether a healthy, balanced biological community is present. The Department shall utilize biological and aquatic habitat parameters listed below and in the current version of the “Water Body Assessment Guidance,” as published by the Idaho Department of Environmental Quality, as a guide to assist in the assessment of beneficial use status. Revisions to this guidance will be made after notice and an opportunity for public comment. These parameters are not to be considered or treated as individual water quality criteria or otherwise interpreted or applied as water quality standards. The Department shall employ a weight of evidence approach in evaluating a combination of water quality data types (including, but not limited to, aquatic habitat and biological parameters), when such a combination of data are available, in making its final use support determination. (3-30-07)

01. Aquatic Habitat Parameters. These parameters may include, but are not limited to, stream width, stream depth, stream shade, measurements of sediment impacts, bank stability, water flows, and other physical characteristics of the stream that affect habitat for fish, macroinvertebrates or other aquatic life. (3-30-07)

02. Biological Parameters. These parameters may include, but are not limited to, evaluation of aquatic macroinvertebrates including Ephemeroptera, Plecoptera and Trichoptera (EPT), Hilsenhoff Biotic Index, measures of functional feeding groups, and the variety and number of fish or other aquatic life to determine biological community diversity and functionality. (3-20-97)

03. Use of Data Regarding pH, Turbidity, Dissolved Oxygen, and Temperature. In making use support determinations, the Department may give less weight to departures from criteria in Section 250 for pH, turbidity, dissolved oxygen, and temperature that are infrequent, brief, and small if aquatic habitat and biological data indicate to the assessor that aquatic life beneficial uses are otherwise supported. Unless otherwise determined by the Department, “infrequent” means less than ten percent (10%) of valid, applicable, representative measurements when continuous data are available; “brief” means two (2) hours or less; and “small” means

conditions that avoid acute effects. Subsection 05~~34~~.03 only applies to use of this data for determination of beneficial use support status. Subsection 05~~34~~.03 does not apply to or affect the application of criteria for any other regulatory purpose including, but not limited to, determining whether a particular discharge or activity violates water quality standards. (~~3-30-07~~)()

04. Natural Conditions. There is no impairment of beneficial uses or violation of water quality standards where natural background conditions exceed any applicable water quality criteria as determined by the Department, and such natural background conditions shall not, alone, be the basis for placing a water body on the list of water quality limited water bodies described in Section 05~~45~~. (~~3-15-02~~)()

05. Rigor, Quality and Relevance of Data. In making any use support determination, the Department shall consider the scientific rigor associated with the collection of samples or data (e.g., the scientific methods used to collect samples or data); the quality of measurements and/or analysis of the samples (e.g., methodology, instrumentation, accuracy, precision, and limits of detection where applicable); and the relevance of the data (e.g., the relationship to a water quality standard, beneficial use or cause of impairment, and how representative the samples or data are of the water body in question). (3-30-07)

05~~45~~. WATER QUALITY LIMITED WATERS AND TMDLS.

01. After Determining That Water Body Does Not Support Use. After determining that a water body does not fully support designated or existing beneficial uses in accordance with Section 05~~34~~, the Department, in consultation with the applicable basin and watershed advisory groups, shall evaluate whether the application of required pollution controls to sources of pollution affecting the impaired water body would restore the water body to full support status. This evaluation may include the following: (~~3-20-97~~)()

a. Identification of significant sources of pollution affecting the water body by past and present activities; (3-20-97)

b. Determination of whether the application of required or cost-effective interim pollution control strategies to the identified sources of pollution would restore the water body to full support status within a reasonable period of time; (3-20-97)

c. Consultation with appropriate basin and watershed advisory groups, designated agencies and landowners to determine the feasibility of, and assurance that required or cost-effective interim pollution control strategies can be effectively applied to the sources of pollution to achieve full support status within a reasonable period of time; (3-20-97)

d. If pollution control strategies are applied as set forth in this Section, the Department shall subsequently monitor the water body to determine whether application of such pollution controls were successful in restoring the water body to full support status. (3-20-97)

02. Water Bodies Not Fully Supporting Beneficial Uses. After following the process identified in Subsection 05~~45~~.01, water bodies not fully supporting designated or existing beneficial uses and not meeting applicable water quality standards despite the application of required pollution controls shall be identified by the Department as water quality limited water

bodies, and shall require the development of TMDLs or other equivalent processes, as described under Section 303(d)(1) of the Clean Water Act. A list of water quality limited water bodies shall be published periodically by the Department in accordance with Section 303(d) of the Clean Water Act and be subject to public review prior to submission to EPA for approval. Informational TMDLs may be developed for water bodies fully supporting beneficial uses as described under Section 303(d)(3) of the Clean Water Act, however, they will not be subject to the provisions of this Section. ~~(3-20-97)~~()

03. Priority of TMDL Development. The priority of TMDL development for water quality limited water bodies identified in Subsection 05~~4~~⁵.02 shall be determined by the Director in consultation with the Basin Advisory Groups as described in Sections 39-3601, et seq., Idaho Code, depending upon the severity of pollution and the uses of the water body, including those of unique ecological significance. Water bodies identified as a high priority through this process will be the first to be targeted for development of a TMDL or equivalent process. ~~(3-20-97)~~()

04. High Priority Provisions. Until a TMDL or equivalent process is completed for a high priority water quality limited water body, new or increased discharge of pollutants which have caused the water quality limited listing may be allowed if interim changes, such as pollutant trading, or some other approach for the pollutant(s) of concern are implemented and the total load remains constant or decreases within the watershed. Interim changes shall maximize the use of cost effective measures to cap or decrease controllable human-caused discharges from point and nonpoint sources. Once the TMDL or equivalent process is completed, any new or increased discharge of causative pollutants will be allowed only if consistent with the approved TMDL. Nothing in this section shall be interpreted as requiring best management practices for agricultural operations which are not adopted on a voluntary basis. (3-20-97)

05. Medium and Low Priority Provisions. Until TMDLs or equivalent processes are developed for water quality limited water bodies identified as medium or low priority, the Department shall require interim changes in permitted discharges from point sources and best management practices for nonpoint sources deemed necessary to prohibit further impairment of the designated or existing beneficial uses. Nothing in this section shall be interpreted as requiring best management practices for agricultural operations which are not adopted on a voluntary basis. (3-20-97)

a. In determining the necessity for interim changes to existing activities and limitations upon proposed activities, the Department, in consultation with basin and watershed advisory groups, shall evaluate the water quality impacts caused by past regulated and unregulated activities in the affected watershed. (3-20-97)

b. Consideration of interim changes shall maximize the use of cost-effective and timely measures to ensure no further impairment of designated or existing uses. (3-20-97)

06. Pollutant Trading. Development of TMDLs or equivalent processes or interim changes under these rules may include pollutant trading with the goal of restoring water quality limited water bodies to compliance with water quality standards. (3-20-97)

07. Idaho Agriculture Pollution Abatement Plan. Use of best management practices by agricultural activities is strongly encouraged in high, medium and low priority watersheds. The

Idaho Agriculture Pollution Abatement Plan is the source for best management practices for the control of nonpoint sources of pollution for agriculture. (3-20-97)

~~055. OUTSTANDING RESOURCE WATERS (ORW).~~

~~01. Nominations for Outstanding Resource Water Designation. Any person may request, in writing to the Board, that a stream segment be considered for designation as an outstanding resource water. To be considered for ORW designation, nominations must be received by the Board by April 1 or ten (10) days after the adjournment sine die of that year's regular session of the legislature, whichever is later, for consideration during the next regular session of the legislature. All nominations shall be addressed to:~~

~~Idaho Board of Environmental Quality
Department of Environmental Quality
Outstanding Resource Water Nomination
1410 N. Hilton
Boise, Idaho 83706-1255~~

~~The nomination shall include the following information: (3-23-98)~~

- ~~a. The name, description and location of the stream segment; (7-1-93)~~
- ~~b. The boundaries upstream and downstream of the stream segment; (7-1-93)~~
- ~~c. An explanation of what makes the segment a candidate for the designation; (7-1-93)~~
- ~~d. A description of the existing water quality and any technical data upon which the description is based as can be found in the most current basin status reports; (7-1-93)~~
- ~~e. A discussion of the types of nonpoint source activities currently being conducted that may lower water quality, together with those activities that are anticipated during the next two (2) years, as described in the most current basin status reports; and (7-1-93)~~
- ~~f. Any additional evidence to substantiate such a designation. (7-1-93)~~

~~02. Public Notice and Public Comment. The Board will give public notice that one (1) or more stream segments are being considered for recommendation to the legislature as outstanding resource waters. Public notice will also be given if a public hearing is being held. Public comments regarding possible designation will be accepted by the Board for a period of at least forty five (45) days. Public comments may include, but are not limited to, discussion of socio-economic considerations; fish, wildlife or recreational values; and other beneficial uses. (7-1-93)~~

~~03. Public Hearing. A public hearing(s) may be held at the Board's discretion on any stream segment nominated for ORW designation. Public notice will be given if a hearing is held. The decision to hold a hearing may be based on the following criteria: (7-1-93)~~

~~a. One (1) or more requests contain supporting documentation and valid reasons for designation; (7-1-93)~~

~~b. A stream segment is generally recognized as constituting an outstanding national resource, such as waters of national and state parks, and wildlife refuges; (7-1-93)~~

~~c. A stream segment is generally recognized as waters of exceptional recreational or ecological significance; (7-1-93)~~

~~d. The Board shall give special consideration to holding a hearing and to recommending for designation by the legislature, waters which meet criteria found in Subsection 055.03.b. and 055.03.c.; (3-20-97)~~

~~e. Requests for a hearing will be given due consideration by the Board. Public hearings may be held at the Board's discretion. (7-1-93)~~

~~**04. Board Review.** The Board shall review the stream segments nominated for ORW designation and based on the hearing or other written record, determine the segments to recommend as ORWs to the legislature. The Board shall submit a report for each stream segment it recommends for ORW designation. The report shall contain the information specified in Subsection 055.01 and information from the hearing record or other written record concerning the impacts the designation would have on socio-economic conditions; fish, wildlife and recreational values; and other beneficial uses. The Department shall then prepare legislation for each segment that will be recommended to the legislature as an ORW. The legislation shall provide for the listing of designated segments in these regulations without the need for formal rule-making procedures, pursuant to Sections 67-5200, et seq., Idaho Code. (3-20-97)~~

~~**05. Designated Waters.** Those stream segments designated by the legislature as ORWs are listed in Sections 110 through 160. (7-1-93)~~

~~**06. Restriction of Nonpoint Source Activities on Outstanding Resource Waters.** Nonpoint source activities on ORWs shall be restricted as specified in Subsection 350.04. (7-1-93)~~

(BREAK IN CONTINUITY OF SECTIONS)

350. RULES GOVERNING NONPOINT SOURCE ACTIVITIES.

01. Implementation Policy. (7-1-93)

a. Nonpoint sources are the result of activities essential to the economic and social welfare of the state. The a real extent of most nonpoint source activities prevents the practical application of conventional wastewater treatment technologies. Nonpoint source pollution management, including best management practices, is a process for protecting the designated beneficial uses and ambient water quality. Best management practices should be designed,

implemented and maintained to provide full protection or maintenance of beneficial uses. Violations of water quality standards which occur in spite of implementation of best management practices will not be subject to enforcement action. However, if subsequent water quality monitoring and surveillance by the Department, based on the criteria listed in Sections 200, 210, 250, 251, 252, and 253, indicate water quality standards are not met due to nonpoint source impacts, even with the use of current best management practices, the practices will be evaluated and modified as necessary by the appropriate agencies in accordance with the provisions of the Administrative Procedure Act. If necessary, injunctive or other judicial relief may be initiated against the operator of a nonpoint source activity in accordance with the Director's authorities provided in Section 39-108, Idaho Code. In certain cases, revision of the water quality standards may be appropriate. (4-5-00)

b. As provided in Subsections 350.01.a. and 350.02.a. for nonpoint source activities, failure to meet general or specific water quality criteria, or failure to fully protect a beneficial use, shall not be considered a violation of the water quality standards for the purpose of enforcement. Instead, water quality monitoring and surveillance of nonpoint source activities will be used to evaluate the effectiveness of best management practices in protecting beneficial uses as stated in Subsections 350.01.a. and 350.02.b. (12-31-91)

02. Limitation to Nonpoint Source Restrictions. Nonpoint source activities will be subject to the following: (7-1-93)

a. Except as provided in Subsections 350.02.b. and 350.02.c., so long as a nonpoint source activity is being conducted in accordance with applicable rules, regulations and best management practices as referenced in Subsection 350.03, or in the absence of referenced applicable best management practices, conducted in a manner that demonstrates a knowledgeable and reasonable effort to minimize resulting adverse water quality impacts, the activity will not be subject to conditions or legal actions based on Subsections 400.01.b. or 080.01. In all cases, if it is determined by the Director that imminent and substantial danger to the public health or environment is occurring, or may occur as a result of a nonpoint source by itself or in combination with other point or nonpoint source activities, then the Director may seek immediate injunctive relief to stop or prevent that danger as provided in Section 39-108, Idaho Code. (7-1-93)

b. If the Director determines through water quality monitoring and surveillance that water quality criteria are not being met, or that beneficial uses are being impaired as a result of a nonpoint source activity by itself or in combination with other point and nonpoint source activities then: (3-3-87)

i. For an activity occurring in a manner not in accordance with approved best management practices, or in a manner which does not demonstrate a knowledgeable and reasonable effort to minimize resulting adverse water quality impacts, the Director may with appropriate inter-Departmental coordination. (3-3-87)

(1) Prepare a compliance schedule as provided in Section 39-116, Idaho Code; and/or (2-2-83)

(2) Institute administrative or civil proceedings including injunctive relief under Section 39-108, Idaho Code. (3-3-87)

ii. For activities conducted in compliance with approved best management practices, or conducted in a manner which demonstrates knowledgeable and reasonable effort to minimize resulting adverse water quality impacts, the Director may, with appropriate inter-Departmental coordination: (3-3-87)

(1) For those activities with approved best management practices as listed in Subsection 350.03 formally request that the responsible agency conduct a timely evaluation and modification of the practices to insure full protection of beneficial uses. (12-31-91)

(2) For all other nonpoint source activities which do not have approved best management practices as listed in Subsection 350.03, develop and recommend to the operator control measures necessary to fully protect the beneficial uses. Such control measures may be implemented on a voluntary basis, or where necessary, through appropriate administrative or civil proceedings. (12-31-91)

(3) If, in a reasonable and timely manner the approved best management practices are not evaluated or modified by the responsible agency, or if the appropriate control measures are not implemented by the operator, then the Director may seek injunctive relief to prevent or stop imminent and substantial danger to the public health or environment as provided in Section 39-108, Idaho Code. (3-3-87)

c. The Director may review for compliance project plans for proposed nonpoint source activities, based on whether or not the proposed activity will fully maintain or protect beneficial uses as listed in Sections 200, 250, 251, 252, and 253. In the absence of relevant criteria in those Sections, the review for compliance will be based on whether or not the proposed activity: (4-5-00)

i. Will comply with approved or specialized best management practices; and (3-3-87)

ii. Provides a monitoring plan which, when implemented, will provide information to the Director adequate to determine the effectiveness of the approved or specialized best management practices in protecting the beneficial uses of water; and (3-3-87)

iii. Provides a process for modifying the approved or site-specific best management practices in order to protect beneficial uses of water. (3-3-87)

d. For projects determined not to comply with those requirements, the plan may be revised and resubmitted for additional review by the Department. Any person aggrieved by a final determination of the Director may, within thirty (30) days, file a written request for a hearing before the Board in accordance with the Idaho Administrative Procedures Act. In all cases, implementation of projects detailed in a plan shall be conducted in a manner which will not result in imminent and substantial danger to the public health or environment. (3-3-87)

03. Approved Best Management Practices. The following are approved best management practices for the purpose of Subsection 350.02: (12-31-91)

- a. “Rules Pertaining to the Idaho Forest Practices Act,” IDAPA 20.02.01, as adopted by Board of Land Commissioners; (12-31-91)
- b. Idaho Department of Environmental Quality Rules, IDAPA 58.01.06, “Solid Waste Management Rules and Standards”; (7-1-93)
- c. Idaho Department of Environmental Quality Rules, IDAPA 58.01.03, “Individual/Subsurface Sewage Disposal Rules”; (7-1-93)
- d. “Stream Channel Alteration Rules,” IDAPA 37.03.07, as adopted by the Board of Water Resources; (7-1-93)
- e. For the Spokane Valley Rathdrum Prairie Aquifer, “Rathdrum Prairie Sewage Disposal Regulations,” as adopted by the Panhandle District Health Department Board of Health and approved by the Idaho Board of Environmental Quality; (7-1-93)
- f. “Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities,” IDAPA 20.03.02, as adopted by the Board of Land Commissioners; and (7-1-93)
- g. “Dredge and Placer Mining Operations in Idaho,” IDAPA 20.03.01, as adopted by the Board of Land Commissioners. (7-1-93)
- h. “Rules Governing Dairy Waste,” IDAPA 02.04.14, as adopted by the Department of Agriculture. (3-20-97)

~~**04. Restriction of Nonpoint Source Activities on Outstanding Resource Waters.**~~
~~(12-31-91)~~

~~**a.** The water quality of ORWs shall be maintained and protected. After the legislature has designated a stream segment as an outstanding resource water, no person shall conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of that ORW, except for conducting short term or temporary nonpoint source activities which do not alter the essential character or special uses of a segment, allocation of water rights, or operation of water diversions or impoundments. Stream segments not designated as ORWs that discharge directly into an ORW shall not be subject to the same restrictions as an ORW, nor shall the ORW mixing zone be subject to the same restrictions as an ORW. A person may conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of a tributary or stream segment, which discharges directly into an ORW or an ORW mixing zone, provided that the water quality of that ORW below the mixing zone shall not be lowered.~~ (12-31-91)

~~**b.** After the legislature has designated a stream segment as an outstanding resource water as outlined in Subsection 055.05, existing nonpoint source activities may continue and shall be conducted in a manner that maintains and protects the current water quality of an ORW. The provisions of this section shall not affect short term or temporary activities that do not alter the essential character or special uses of a segment, allocation of water rights, or operations of water diversions or impoundments, provided that such activities shall be conducted in conformance with applicable laws and regulations.~~ (3-20-97)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.17 - RULES FOR THE RECLAMATION AND REUSE OF MUNICIPAL AND INDUSTRIAL WASTEWATER

DOCKET NO. 58-0117-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-first Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapter 1, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the [Idaho Administrative Bulletin, September 1, 2010, Vol. 10-9, pages 470 through 511](#). After consideration of public comments, the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/waste_water/58_0117_1001_pending.cfm or by contacting the undersigned.

IDAHO CODE SECTION 39-107D STATEMENT: Section 39-107D, Idaho Code, provides that DEQ must meet certain requirements when it formulates and recommends rules which are broader in scope or more stringent than federal law or regulations, or which propose to regulate an activity not regulated by the federal government. There is no federal law or regulation that is comparable to the Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater. Therefore, the changes to these rules are not broader in scope or more stringent than federal law or regulations.

This rulemaking does revise rules and standards necessary to protect human health and the environment. The following is a summary of additional information required by Sections 39-107D(3) and (4), Idaho Code. Information relating to Section 39-107D(2) has also been provided.

Section 39-107D(2)(a), Idaho Code. To the degree that a department action is based on science, the department shall utilize the best available peer reviewed science and supporting studies conducted in accordance with sound objective scientific practices.

The rule changes were initiated for clarification purposes rather than for scientific reasons. By clarifying the language in the Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater, DEQ is facilitating more efficient implementation of the rule, thereby reducing the economic burden on the regulated community. Improved rules also allow the public to better understand the requirements imposed on the regulated community to protect human health and the environment. Specifically, the changes to the rule improve upon the administrative process to determine the permit conditions for municipal and industrial wastewater reuse facilities. The administrative improvements in the rule are not based on science. DEQ has, however, relied upon

its experience dealing with reuse activities in drafting the changes to the rule.

Section 39-107D(2)(b), Idaho Code. To the degree that a department action is based on science, the department shall utilize data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justifies use of the data.

This provision is not applicable because the rule changes are for the purpose of clarifying existing rule language. Please see explanation above.

Section 39-107D(3), Idaho Code. Any proposed rule subject to this section which proposes a standard necessary to protect human health and the environment shall also include in the rulemaking record requirements under chapter 52, title 67, Idaho Code, the following additional information:

(a) Identification of each population or receptor addressed by an estimate of public health effects or environmental effects;

(b) Identification of the expected risk or central estimate of risk for the specific population or receptor;

(c) Identification of each appropriate upper bound or lower bound estimate of risk;

(d) Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty; and

(e) Identification of studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.

The changes to the rule improve upon the administrative process to determine the permit conditions for municipal and industrial wastewater reuse facilities in order to protect human health and the environment. The rule changes in this rulemaking are not based upon any analysis of risk to specific populations or receptors, but rather improve upon the permitting process necessary to minimize risk to human health and the environment posed by permitted reuse facilities. Therefore, DEQ has no additional information relevant to this rulemaking pursuant to Section 39-107D(3).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Olga Cuzmanov at olga.cuzmanov@deq.idaho.gov, (208)373-0449.

Dated this 12th day of November, 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

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Chapter 1, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before September 15, 2010. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: This rulemaking is necessary because DEQ has determined that Class A and Class B reclaimed wastewater are highly treated effluents and existing nomenclature and requirements may be too strict. Also, this rulemaking will add language to allow for time extension of reuse permits under certain conditions in order to reduce permit processing times. Other anticipated revisions will clarify current rule language, reduce redundancy with other rules, and increase efficiency.

The proposed rule includes the following:

- 1. Revise name of rule chapter to “Recycled Water Rules”;**
- 2. Revise and add definitions;**
- 3. Revise and renumber Section 401, Plan and Specification Review (moved to Section 606);**
- 4. Revise Sections 600 and 601 to address frequency of total coliform sampling, recycled water uses, pipe identification and signage, distribution pipelines requirements, nutrient removal requirements, reliability and redundancy requirements;**
- 5. Revise and renumber Section 602, Demonstration of Technical, Financial, and Managerial Capacity of Municipal Reuse Facility (moved to Section 612);**
- 6. Revise language for permit modifications and provide examples of minor and major modifications;**
- 7. Add language for rapid infiltration systems and subsurface design, construction and**

- discharge requirements;
8. Add language for industrial recycled water permit requirements and permit content;
 9. Add language to establish the mechanism for a reuse permit transfer and for temporary cessation or closure of operations; and
 10. Add language to allow for continuation of expiring reuse permits under certain conditions and set the duration of a reuse permit for a fixed term of not more than ten (10) years.

This proposed rule also includes other revisions identified during the negotiated rulemaking process as necessary for maintaining consistency within this rule chapter and with other DEQ rule chapters.

Idaho Association of Commerce & Industry, Idaho Council on Industry & the Environment, Idaho Association of Cities, consulting engineers, existing and potential permittees, and the development community 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. Please note, however, that while portions of Section 600 and entire Section 601 have been struck out, the majority of the struck out rule text has been revised, reorganized and inserted as underlined rule text into new sections of the proposed rule.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the November 2010 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon the adjournment of the 2011 legislative session if adopted by the Board and approved by the Legislature.

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:

This proposed rule incorporates the American Water Works Association (AWWA) Standards by reference. Incorporation by reference is necessary because publication of the AWWA Standards in the rule would be unduly cumbersome and expensive. Information for obtaining the AWWA Standards is included in the proposed rule.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 58.01.23.810-815.

On April 7, 2010, the Notice of Negotiated Rulemaking was published in the [Idaho Administrative Bulletin, Vol. 10-4](#), pages 28 and 29, and a preliminary draft negotiated rule was made available for public review. Meetings were held on April 27, May 27, and June 22, 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 comments received, and documents distributed during the negotiated rulemaking process is available at http://www.deq.idaho.gov/rules/waste_water/58_0117_1001_proposed.cfm.

IDAHO CODE SECTION 39-107D STATEMENT: Section 39-107D, Idaho Code, provides that DEQ must meet certain requirements when it formulates and recommends rules which are broader in scope or more stringent than federal law or regulations, or which propose to regulate an activity not regulated by the federal government. There is no federal law or regulation that is comparable to the Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater. Therefore, the proposed changes to these rules are not broader in scope or more stringent than federal law or regulations.

This rulemaking does revise rules and standards necessary to protect human health and the environment. The following is a summary of additional information required by Sections 39-107D(3) and (4), Idaho Code. Information relating to Section 39-107D(2) has also been provided.

Section 39-107D(2)(a), Idaho Code. To the degree that a department action is based on science, the department shall utilize the best available peer reviewed science and supporting studies conducted in accordance with sound objective scientific practices.

The proposed rule changes were initiated for clarification purposes rather than for scientific reasons. By clarifying the language in the Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater, DEQ is facilitating more efficient implementation of the rule, thereby reducing the economic burden on the regulated community. Improved rules also allow the public to better understand the requirements imposed on the regulated community to protect human health and the environment. Specifically, the changes to the rule improve upon the administrative process to determine the permit conditions for municipal and industrial wastewater reuse facilities. The administrative improvements in the rule are not based on science. DEQ has, however, relied upon its experience dealing with reuse activities in drafting the proposed changes to the rule.

Section 39-107D(2)(b), Idaho Code. To the degree that a department action is based on science, the department shall utilize data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justifies use of the data.

This provision is not applicable because the proposed rule changes are for the purpose of clarifying existing rule language. Please see explanation above.

Section 39-107D(3), Idaho Code. Any proposed rule subject to this section which proposes a standard necessary to protect human health and the environment shall also include in the rulemaking record requirements under chapter 52, title 67, Idaho Code, the following additional information:

- 1. Identification of each population or receptor addressed by an estimate of public health effects or environmental effects;**
- 2. Identification of the expected risk or central estimate of risk for the specific population or receptor;**
- 3. Identification of each appropriate upper bound or lower bound estimate of risk;**
- 4. Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty; and**

5. Identification of studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.

The proposed changes to the rule improve upon the administrative process to determine the permit conditions for municipal and industrial wastewater reuse facilities in order to protect human health and the environment. The rule changes proposed in this rulemaking are not based upon any analysis of risk to specific populations or receptors, but rather improve upon the permitting process necessary to minimize risk to human health and the environment posed by permitted reuse facilities. Therefore, DEQ has no additional information relevant to this rulemaking pursuant to Section 39-107D(3).

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

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact Olga Cuzmanov at olga.cuzmanov@deq.idaho.gov, (208)373-0449.

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 September 29, 2010.

Dated this 30th day of July, 2010.

THE FOLLOWING IS THE TEXT FOR DOCKET NO. 58-0117-1001

000. LEGAL AUTHORITY.

Pursuant to Title 39, Chapter 1, Idaho Code, the Director of the Department of Environmental Quality is authorized to adopt or formulate and recommend to the Board of Environmental Quality, and the Board of Environmental Quality is authorized to adopt rules, regulations and standards necessary and feasible to protect the environment and the health of citizens of the State including provisions for the issuance of pollution source permits, authorized by Section 39-115, Idaho Code, and review of plans and specifications for wastewater treatment facilities, authorized by Section 39-118, Idaho Code. (4-1-88)()

001. TITLE AND SCOPE.

01. Title. These rules are to be known and cited as Idaho Department of Environmental Quality Rules, IDAPA 58.01.17, "~~Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater~~ Recycled Water Rules." (4-11-06)()

02. Scope. These rules establish the procedures and requirements for the issuance and maintenance of pollution source permits for ~~reclamation and~~ reuse facilities, ~~including permits for the treatment of municipal wastewaters for other reuse purposes as defined in Subsection 600.07, Direct Use of Municipal Reclaimed Wastewater~~ also referred to in these rules as “reuse permits.” (4-11-06)()

002. WRITTEN INTERPRETATIONS.

Any written statements pertaining to the interpretation of these rules shall be available for review at the Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. (4-6-05)

003. INCORPORATION BY REFERENCE.

American Water Works Association (AWWA) Standards, effective December 2009, are incorporated by reference into these rules. This document is available for review at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502, or can be purchased from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235, Telephone (800) 926-7337, <http://apps.awwa.org/ebusmain/OnlineStore.aspx>. ()

~~**01. General.** Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 003.02 shall constitute the full adoption by reference.~~ (4-6-05)

~~**02. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules:~~ (4-6-05)

~~**a.** IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” Section 542, as codified in the 2007 Idaho Administrative Code.~~ (3-30-07)

~~**b.** IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” Section 543, as codified in the 2007 Idaho Administrative Code.~~ (3-30-07)

~~**03. Availability of Documents Incorporated by Reference.** Copies of the documents incorporated by reference are available at the following locations.~~ (4-6-05)

~~**a.** Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, www.deq.idaho.gov.~~ (4-11-06)

~~**b.** Idaho Administrative Rules website, <http://www.state.id.us/adm/adminrules/agyindex.htm>.~~ (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

008. REFERENCED MATERIALS.

01. Idaho Guidance for ~~the Reclamation and Reuse of Municipal and Industrial~~

~~Wastewater~~ **Recycled Water**. This document, and subsequent revisions of this document, provides assistance in applying and interpreting these rules relating to **the** permitting and operations of ~~reclamation and~~ reuse facilities. Copies of the document are available at the Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, http://www.deq.idaho.gov/water/permits_forms/permitting/guidance.cfm. (3-30-07)()

02. ~~Idaho Wastewater Rules, IDAPA 58.01.16. The Idaho Wastewater Rules are available at <http://adm.idaho.gov/adminrules/rules/idapa58/0116.pdf>~~ **Administrative Rules of the Department of Environmental Quality**. The following administrative rules of the Department of Environmental Quality are referenced in these rules and are available at <http://adm.idaho.gov/adminrules/rules/idapa58/58index.htm>. (3-30-07)()

a. IDAPA 58.01.02, "Water Quality Standards." ()

b. IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules." ()

c. IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems." ()

d. IDAPA 58.01.11, "Ground Water Quality Rule." ()

e. IDAPA 58.01.16, "Wastewater Rules." ()

03. **Treatment Technology Report for Recycled Water**. The State of California ~~Department of Health Services~~ Treatment Technology Report for Recycled Water, <http://www.dhs.ca.gov/ps/dwem/publications/waterrecycling/treatmenttechnology.pdf> <http://www.cdph.ca.gov/healthinfo/environmentalhealth/water/pages/waterrecycling.aspx>. (3-30-07)()

04. **Recommended Standards for Wastewater Facilities**. Recommended Standards for Wastewater Facilities - Great Lakes-Upper Mississippi River Board of State Sanitary Engineers, <http://10statesstandards.com/wastewaterstandards.html>. ()

05. **AWWA Manual M24**. AWWA Manual M24, Chapter 4 for Dual Water Systems. This document is available for review at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502, or can be purchased from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235, Telephone (800) 926-7337, <http://apps.awwa.org/EbusMain/Default.aspx?TabId=55&ProductID=6713>. ()

06. **Idaho Standards for Public Works Construction**. This document is available for a fee through the Local Highway Technical Assistance Council (LHTAC) at LHTAC, 3330 Grace Street, Boise, ID, 83703, (208) 344-0565. ()

009. -- 099. (RESERVED).

100. APPLICABILITY.

01. **Applicability to ~~Reclamation and~~ Reuse Facilities**. All ~~reclamation and~~ **non-excluded** reuse facilities are subject to the ~~permit~~ requirements of these rules. (4-11-06)()

02. Excluded Facilities. ()

a. Land application of wastewater from livestock truck washing facilities, feedlots, dairies and mining are excluded from permit requirements under these rules ~~but are subject to Idaho Department of Environmental Quality Rules, IDAPA 58.01.16, "Wastewater Rules."~~ ()

b. The permit requirements set forth in these rules shall not apply to the incidental use of recycled water for landscape irrigation at a municipal wastewater treatment plant if: ()

i. There is no other recycled water use that would subject the municipal wastewater treatment plant to these rules; ()

ii. The municipal wastewater treatment plant has been issued an NPDES permit and the quality of the effluent meets that required by an NPDES permit; and ()

iii. Public access to the area of landscape irrigation is restricted. ()

c. The Director may exclude other facilities if covered adequately by other law. (4-11-06)()

03. Reuse Policy. It is the policy of the Department to promote, where appropriate, the practice of reuse of both municipal and industrial ~~reclaimed wastewater~~ recycled water through the continued creation and implementation of rules and guidance that give permittees various opportunities for new forms of reuse. (4-11-06)()

101. -- 199. (RESERVED).

200. DEFINITIONS.

For the purpose of these rules, the following definitions apply unless another meaning is clearly indicated by context: (4-1-88)

01. Applicant. The person applying for a ~~reclamation and~~ reuse permit. (4-11-06)()

02. Applicable Requirements. Any state, local or federal statutes, regulations or ordinances to which the facility is subject. (4-1-88)

03. Beneficial Use. Any of the various uses which may be made of the water of Idaho, including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, navigation, recreation in and on the water, wildlife habitat, and aesthetics. The beneficial use is dependent upon actual use, the ability of the water to support a non-existing use either now or in the future, and its likelihood of being used in a given manner. The use of water for the purpose of wastewater dilution or as a receiving water for a waste treatment facility effluent is not a beneficial use. ()

04. Biochemical Oxygen Demand (BOD). The measure of the amount of oxygen necessary to satisfy the biochemical oxidation requirements of the organic materials at the time the sample is collected; unless otherwise specified, this term will mean the five (5) day BOD

incubated at twenty (20) degrees C. ()

~~035.~~ **Board.** The Idaho *State* Board of Environmental Quality. (~~12-31-91~~)()

~~046.~~ **Buffer Distances.** (4-11-06)

~~a.~~ The A specified distances between ~~the an~~ actual point of reuse of ~~reclaimed wastewater recycled water~~ and ~~other-uses a land feature or resource use specified in these rules,~~ such as wells, adjoining property, inhabited dwellings, ~~and or~~ other features. Buffer distances are set to: (4-11-06)()

~~i.~~ Protect public health by limiting exposure to wastewater and conditions associated with reuse facilities; (4-11-06)

~~ii.~~ Protect waters of the state, including surface water, ground water and drinking water supplies; and (4-11-06)

~~iii.~~ Help ensure that wastewater is restricted to the reuse facilities. (4-11-06)

~~b.~~ In determining buffer distances, the Department will consider, as applicable, the degree of treatment or pretreatment of wastewater; the method of irrigation; physical or vegetative barriers; studies of the content of the wastewater, such as pathogen studies; best management practices; environmental conditions, such as wind speed and direction; and other information relevant to protecting public health and the environment. Further information regarding buffer distances is set forth in The Idaho Guidance for The Reclamation and Reuse of Municipal and Industrial Wastewater. (4-11-06)

~~05.~~ Class A Capacity. The capabilities required of a Class A effluent treatment and distribution system in order to achieve and maintain compliance with these rules. (4-6-05)

~~06.~~ Class A Effluent Distribution System. The distribution system for Class A effluent as described in these rules. The distribution system does not include any of the collection or treatment portions of the wastewater facility and is not subject to operator licensing requirements of IDAPA 58.01.16, "Wastewater Rules." (4-11-06)

~~07.~~ **Department.** The Idaho Department of Environmental Quality. (4-1-88)

~~08.~~ **Director.** The Director of the Department of Environmental Quality or the Director's designee. (4-1-88)

~~09.~~ Idaho Guidance for the Reclamation and Reuse of Municipal and Industrial Wastewater. This document, and subsequent revisions of this document, provides assistance in applying and interpreting these rules relating to for permitting and operating reclamation and reuse facilities. Copies of the document are available at the Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255 and www.deq.idaho.gov. Ground Water Recharge. The process of adding recycled water to the zone of saturation. (4-11-06)()

~~10.~~ **Industrial Wastewater.** Wastewater that is the by-product of any industrial

~~processes including, but not limited to, food processing or food washing~~ All wastewater, treated or untreated, that is not defined as municipal wastewater. (4-11-06)()

11. Land Application. ~~The application of municipal or industrial wastewater to land for the purpose of land treatment.~~ A process or activity involving application of recycled water to the land surface. Land application includes, but is not limited to, spray irrigation, ridge and furrow, overland flow, subsurface absorption, and discharge to a rapid infiltration system. (4-11-06)()

~~12. Land Treatment. The use of land, soil, and crops for treatment of municipal or industrial wastewater.~~ (4-11-06)

12. Landscape Impoundment. Any lake, pond, or other water holding feature constructed or managed to store recycled water where swimming, wading, boating, fishing, and other water-based recreational activities are prohibited. A landscape impoundment is created for storage and may incidentally serve a landscaping or aesthetic purpose. ()

13. Modal Contact Time. The amount of time elapsed between the time that a tracer, such as salt or dye, is injected into the influent at the entrance to a chamber and the time that the highest concentration of the tracer is observed in the effluent from the chamber. (3-30-07)

14. Municipal Wastewater. Wastewater that contains sewage and associated solids, whether treated or untreated. Municipal wastewater may contain industrial wastewater. Municipal wastewater is also known as domestic wastewater. (4-1-88)()

~~15. New Activity. Any significant change in operation or construction of the wastewater treatment system which may impact the waters of the state.~~ (4-1-88)

165. Non-Contact Cooling Water. Water used to reduce temperature which does not come into direct contact with any raw material, intermediate product, waste product (other than heat) or finished product, the land application of which does not have the potential to negatively impact ground water. (4-1-88)()

16. Non-Potable Mains. The pipelines that collect and/or convey non-potable discharges from or to multiple service connections. Examples would include sewage collection and interceptor mains, storm sewers, non-potable irrigation mains, and recycled water mains. ()

17. Non-Potable Services. The pipelines that convey non-potable discharges from individual facilities to a connection with the non-potable main. This term also refers to pipelines that convey non-potable water from a pressurized irrigation system, recycled water system, and other non-potable systems to individual consumers. ()

18. Non-Potable Water. Water not suitable for drinking by humans. ()

179. NTU (Nephelometric Turbidity Unit). A measure of turbidity based on a comparison of the intensity of the light scattered by the sample under defined conditions with the intensity of the light scattered by a standard reference suspension under the same conditions.

(3-30-07)

20. Operation and Maintenance Manual. A manual that describes in detail the operation, maintenance, and management of a reuse facility. Operation and maintenance manual is also known as plan of operation. ()

21. Peak Day Flow. The largest volume of flow to be received during a one (1) day period expressed as a volume per unit time. ()

22. Peak Hour Flow. The largest volume of flow to be received during a one (1) hour period expressed as a volume per unit time. ()

~~18~~**23. Permit.** Written authorization by the Director to modify, operate, construct, or discharge to a ~~reclamation and~~ reuse facility. (4-11-06)()

~~19~~**24. Permittee.** The person to whom the ~~reclamation and~~ reuse permit is issued. (4-11-06)()

205. Person. An individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state ~~agency~~, or federal agency, department or instrumentality, special district, or interstate body or any legal entity, which is recognized by law as the subject of rights and duties. (4-1-88)()

26. Plan of Operation. A manual that describes in detail the operation, maintenance, and management of a reuse facility. Plan of operation is also known as operation and maintenance manual. ()

~~21~~**27. Point of Compliance.** That point in the ~~reclamation and~~ reuse facility where the ~~reclaimed wastewater~~ recycled water must meet the requirements of the permit. ~~There may be~~ A permit may require more than one (1) point of compliance within the facility depending on the constituents to be monitored. (4-11-06)()

28. Potable Water. Water suitable for drinking by humans. ()

~~22~~**29. Primary Effluent.** ~~Raw~~ Wastewater that has been mechanically treated by screening, degritting, sedimentation and/or skimming processes to remove substantially all floatable and settleable solids. (4-1-88)()

~~23~~**30. Processed Food Crop.** Any crop intended for human consumption that has been changed from its original form and further disinfection occurs. (4-1-88)

~~24~~**31. Rapid Infiltration System.** ~~A wastewater treatment method by which wastewater is applied to land in an amount of twenty (20) to six hundred (600) feet per year for percolation through the soil. Vegetation is not generally utilized by this method.~~ Rapid infiltration systems, also known as soil aquifer treatment systems, are highly permeable infiltration basins that are operated using periods of wetting and drying cycles at set frequencies to provide for both anaerobic and aerobic treatment of the wastewater through the vadose zone. (4-1-88)()

~~25~~**32. Raw Food Crop.** Any crop intended for human consumption which is to be used in its original form. (4-1-88)

~~26. Reclaimed Wastewater.~~ For the purpose of these rules, the term reclaimed wastewater shall mean wastewater that is used in accordance with these rules. (4-11-06)

33. Recycled Water. Water that has been treated by a wastewater treatment system and is used in accordance with these rules. ()

~~27~~**34. Restricted Public Access.** Preventing public entry within the area or point of reuse of a facility and the buffer distance around the area by site location or physical structures such as fencing. A lesser buffer distance may be accepted if aerosol drift is reduced. (4-11-06)()

~~28. Reclamation.~~ The treatment of municipal or industrial wastewater that allows it to be reused for beneficial uses. Reclamation also includes land treatment for wastewater that utilizes soil or crops for partial treatment. (4-11-06)

~~29~~**35. Reuse.** The use of ~~reclaimed wastewater~~ recycled water for ~~beneficial uses including, but not limited to, land treatment,~~ irrigation, aquifer ground water recharge, use in surface water features, landscape impoundments, toilet flushing in commercial buildings, dust control, and other uses. (4-11-06)()

306. Reclamation and Reuse Facility or Facility. Any structure or system designed or used for ~~reclamation or~~ reuse of municipal or industrial wastewater including, but not limited to, industrial and municipal wastewater treatment facilities, pumping and storage facilities, pipeline and distribution facilities, and the property to which the ~~reclaimed wastewater~~ recycled water is applied. This does not include industrial in-plant processes and reuse of process waters within the plant. (4-11-06)()

~~31~~**7. Sewage.** The water-carried human wastes from residences, buildings, industrial establishments and other places, together with such ground water infiltration and surface water as may be present. (4-1-88)()

~~32~~**8. Sludge.** The semi-liquid mass produced and removed by wastewater treatment ~~of water or wastewater~~ process. This does not include grit, garbage, and large solids. (4-1-88)()

~~33. Time Distribution of Flows.~~ A measurement of the volume of wastewater distributed over a specified area during a specified time period. Typical unit of measure is inches per acre per week. (4-1-88)

39. Subsurface Distribution System. Any system with a point of discharge beneath the earth's surface. ()

~~34~~**0. Turbidity.** A measure of the interference of light passage through water, or visual depth restriction due to the presence of suspended matter such as clay, silt, nonliving organic particulates, plankton and other microscopic organisms. Operationally, turbidity measurements

are expressions of certain light scattering and absorbing properties of a water sample. Turbidity is measured by the Nephelometric method. (3-30-07)

~~3541. Wastewater. Unless otherwise specified, industrial waste, municipal waste, agricultural waste, and associated solids or combinations of these, whether treated or untreated, together with such water as is present but not including sludge, or non-contact cooling water. Any combination of liquid or water and pollutants from activities and processes occurring in dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any ground water, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, gray water or commercial or industrial pollutants; and sewage. (4-1-88)()~~

~~42. Water Pollution. Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the state, or the discharge of any pollutant into the waters of the state, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to fish and wildlife, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses. ()~~

~~3643. Waters and Waters of the State. All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. (4-1-88)~~

201. -- 299. (RESERVED).

300. PERMIT REQUIREMENTS AND APPLICATION.

~~01. Permit Required. No person shall construct, modify, operate, or continue to operate a reclamation and reuse facility without a valid permit issued by the Director as provided in these rules. (4-11-06)()~~

~~02. Dischargers. No person shall discharge to a reclamation and reuse facility without a valid permit issued by the Director as provided in these rules. (4-11-06)~~

~~032. Pre-Application Conference. Prospective applicants are encouraged to meet with the Department prior to submission of an application to discuss the application procedure and anticipated application requirements. (4-1-88)()~~

~~04. Application Required. Every person requiring a permit under these rules shall submit a permit application to the Department: (4-1-88)~~

~~a. At least one hundred eighty (180) days prior to the day on which a new activity is to begin; or (4-11-06)~~

~~b. At least one hundred eighty (180) days prior to the expiration of any permit issued pursuant to these rules. (4-11-06)~~

~~053. Application Contents. Application shall be made on a form prescribed by the Director and available from the Department. Except as provided in Subsection 300.054.t., the an~~

application for a reuse permit shall include, ~~but not be limited to,~~ the following information:

~~(3-30-07)~~()

- a. Name, location, and mailing address of the facility; (4-1-88)
- b. Name, mailing address, and phone number of the facility owner and signature of the owner or authorized agent; (4-1-88)
- c. The nature of the entity owning the facility (federal, state, private, or public entity); (4-1-88)
- d. A list of local, state, and federal permits, licenses and approvals related to the activity which have been applied for and which have been received and the dates of application or approval; (4-1-88)
- e. A topographic map of the facility site identifying and showing the location and extent of:
 - i. Wastewater inlets, outlets, and storage structures and facilities, including the land application area; ~~(4-1-88)~~()
 - ii. Wells, springs, wetlands, and surface waters; (4-1-88)
 - iii. Twenty-five (25), fifty (50), and one hundred (100) year flood plains, as available through the Federal Insurance Administration of the Federal Emergency Management Agency; (4-1-88)
 - iv. Service roads; (4-1-88)
 - v. Natural or man-made features necessary for treatment; (4-1-88)
 - vi. Buildings and structures; and (4-1-88)
 - vii. Process chemicals and residue storage facilities. (4-1-88)
- f. A topographic map which may be separate from or combined with the facility site map, extending one quarter (1/4) mile beyond the outer limits of the facility site. The map shall identify and show the location and extent of the following: (4-1-88)
 - i. Wells, springs, wetlands, and surface waters; (4-6-05)
 - ii. Public and private drinking water supply sources and source water assessment areas (public water system protection area information); (4-6-05)
 - iii. Public roads; and (4-1-88)
 - iv. Dwellings and private and public gathering places. (4-1-88)

- g.** If the facility site or any portion thereof is leased or rented, a copy of that lease or rental agreement; (4-1-88)
- h.** The volume of wastewaters to be treated ~~and the time distribution of flows;~~ (4-1-88)()
- i.** The physical, chemical, and biological characteristics of the ~~wastewater~~ **recycled water to be used;** (4-1-88)()
- j.** The climatic, hydrogeologic, and soil characteristics of the facility site; (4-1-88)()
- k.** Description of treatment process and alternatives for disposal of unanticipated excess recycled water that does not meet class specifications; ()
- l.** Site management plans, including a cropping plan where applicable; ()
- m.** A statement and supporting documentation demonstrating that the proposed activity shall comply with IDAPA 58.01.11, "Ground Water Quality Rule"; and ()
- kn.** Any ~~Other~~ information ~~the Department~~ may ~~also be~~ required. The Idaho Guidance for ~~Reclamation and Reuse of Municipal and Industrial Wastewater~~ **Recycled Water** is intended to provide assistance to permit applicants in obtaining a ~~reclamation and~~ reuse permit and may be considered in determining the need for other information. (4-11-06)()

04. Permit Application Content Exceptions. ~~Under certain circumstances for permit reissuances, some information required in renewals may not require one (1) or more of the items listed in Subsections 300.053.a. through k. may not be necessary for evaluation and will not be required.~~ Application content requirements for permit renewals will be clarified at the pre-application conference. (3-30-07)()

065. ~~Existing Reclamation and Reuse Facility~~ **Operation and Maintenance Manual or Plan of Operations.** ~~Any existing reclamation and reuse facility shall be required to have a plan of operation which describes in detail the operation, maintenance, and management of the wastewater treatment system. A facility's operation and maintenance manual must contain all system components relating to the reuse facility in order to comply with IDAPA 58.01.16 "Wastewater Rules," Section 425. Manuals and manual amendments are subject to the review and approval provision therein. In addition to the content required by IDAPA 58.01.16.425, manuals for reuse facilities shall include, if applicable: operation and management responsibility, permits and standards, general plant description, operation and control of unit operations, land application site maps, wastewater characterization, cropping plan, hydraulic loading rate, constituent loading rates, compliance activities, seepage rate testing, site management plans, monitoring, site operations and maintenance, solids handling and processing, laboratory testing, general maintenance, records and reports, store room and inventory, personnel, an emergency operating plan, and any other information required by the Department.~~ (4-11-06)()

07. ~~New Reclamation and Reuse Facility Plan of Operation.~~ ~~Any new proposed reclamation and reuse facility shall be required to have a detailed plan of operation at the fifty~~

~~percent (50%) completion point of construction. In addition, after one (1) year of operation the plan must be updated to reflect actual operating procedures. A general outline of the plan of operation must be provided with the permit application which will satisfy the intent of these rules.~~
(4-11-06)

301. -- 399. (RESERVED).

400. APPLICATION PROCESSING PROCEDURE.

01. Submittal Date. In order to allow for adequate processing of permit applications in accordance with these rules, permit applications for new facilities should be submitted at least one hundred eighty (180) days prior to the applicant's expected commencement of reuse activities. Existing facilities applying for permit renewals shall submit a permit application at least one hundred eighty (180) days prior to expiration of the existing permit. ()

02. Complete Application. If the application is determined to be complete the Director shall provide written notice to the applicant within thirty (30) days after receipt of the application which shall specify: (4-11-06)

- a. The effective date of application, which ~~will~~ shall be the date of the notice; and (4-1-88)()
- b. A projected schedule for processing the permit which lists the tentative dates for:
 - i. Publication of the preliminary permit decision or application denial; and (4-1-88)
 - ii. The date of issuance of a final permit. (4-1-88)

03. Incomplete Application. If the application is determined to be incomplete the Director shall provide written notice to the applicant within thirty (30) days after receipt of the application which specifies deficiencies and specifies additional required information. The Director shall not process an application until it is determined to be complete in accordance with these rules. (4-11-06)

04. Preliminary Decision/Application Denial. Within thirty (30) days of the effective date of the application the Director shall issue a preliminary decision to prepare a draft permit, or issue a decision denying the application. The applicant shall be notified in writing of the Director's preliminary decision or application denial. Notification shall include a staff analysis of the application and a draft permit if appropriate. (4-1-88)

05. Contents of the Staff Analysis. The staff analysis shall briefly state the principal facts and the significant questions considered in preparing the draft permit conditions or the intent to deny, and a summary of the basis for the draft conditions or denial with references to applicable requirements and supporting materials. (4-1-88)

06. Information or Consultation Before Issuance of Draft Permit or Application Denial. After the application is determined to be complete, additional information or consultation

between the applicant and the Department may be needed to clarify, modify, or supplement the application. This action may be initiated by the Director or the applicant. (4-11-06)

067. Issuance and Contents of the Draft Permit. (4-11-06)

a. Issuance and Contents of the Draft Permit. The Director shall issue a draft permit to the applicant within sixty (60) days of issuing a preliminary decision to prepare a draft permit. The draft permit shall be in the same form as a final permit and shall specify conditions of operation and management which will be required for the issuance of the permit. Permit conditions shall protect the environment and the public health from the hazard potential of an existing or proposed wastewater treatment system. (4-11-06)

b. Public Comments. The Department shall provide notice to the public of its issuance of a draft permit. The public may provide written comments for a period of time and in a manner specified in the Department's notice. The Department may, in its discretion, provide an opportunity for the public to provide oral comments.; (4-11-06)

078. Issuance of the Final Permit. The Director shall issue a final permit decision in writing to the applicant within sixty (60) days from the issuance of the draft permit, except the Director may issue the decision at a later date in response to a written request to extend the public comment period. (4-11-06)

089. Effective Date of Final Permit. The final permit shall become effective upon date of issue unless a later effective date is specified in the permit. (4-1-88)

10. Continuation of Expiring Permits. ()

a. A timely and sufficient application for permit renewal shall administratively extend the terms and conditions of an expired permit pursuant to Section 67-5254, Idaho Code. An application shall be considered timely and sufficient under these rules so long as the Department has determined the application is complete under Subsection 400.02 and the application's effective date under Subsection 400.02.a. is prior to the expiration of the current permit. ()

b. A permittee shall perform the closure requirements in a permit, the closure requirements of these rules, and complete all closure plan activities notwithstanding the expiration of the permit. ()

~~401. PLAN AND SPECIFICATION REVIEW.~~

~~The current edition of the "Recommended Standards for Wastewater Facilities—Great Lakes-Upper Mississippi River Board of State Sanitary Engineers," "Idaho Standards for Public Works Construction," and other Department guidance shall be used as guides for the development of plans and specifications for all waste treatment facilities. The Department may review the project plans and specifications and the permit application materials concurrently. Plans and specifications may require modification prior to a final permit being issued. The Department does not require review of industrial in-plant processes, only those processes that treat or distribute wastewater.~~ (4-11-06)

~~01. Requirement for Single Point of Contact Responsible for Entire Wastewater Project. The Applicant (Permittee) shall designate a single point of contact who is responsible for all submissions to the Department related to the reclamation and reuse facilities. This single point of contact shall be identified in the permit application. (4-11-06)~~

~~02. Requirement for Preparation of Plans and Specifications. All plans and specifications for the construction of new sewage systems, sewage treatment plants or systems, other waste treatment or disposal facilities or modification or expansion to same shall be submitted to and approved by the Director before construction can begin in accordance with Chapter 1, Title 39, Idaho Code, and IDAPA 58.01.16, "Wastewater Rules." (4-11-06)~~

~~03. Requirement for Professional Engineer's Seal. All plans and specifications for the construction of new sewage systems, sewage treatment plants or systems, other waste treatment or disposal facilities or modification or expansion to same, wherein the public welfare or the safeguarding of life, health, or property is involved, shall bear the seal, signature and date of a registered professional engineer licensed in the state of Idaho in accordance Chapter 12, Title 54, Idaho Code. (4-6-05)~~

4021. -- 499. (RESERVED).

500. STANDARD PERMIT CONDITIONS.

The following conditions shall apply to and be included in all permits. (4-1-88)

01. Compliance Required. The permittee shall comply with all conditions of the permit. (4-1-88)

02. Renewal Responsibilities. If the permittee intends to continue operation of the permitted facility after the expiration of an existing permit, the permittee shall apply for a new permit in accordance with these rules. (4-1-88)

03. Operation of Facilities. The permittee shall at all times properly maintain and operate all structures, systems, and equipment for treatment, control and monitoring, which are installed or used by the permittee to achieve compliance with the permit or these rules. (4-1-88)

04. Provide Information. The permittee shall furnish to the Director within a reasonable time, any information including copies of records, which may be requested by the Director to determine whether cause exists for modifying, revoking, re-issuing, or terminating the permit, or to determine compliance with the permit or these rules. (4-1-88)

05. Entry and Access. The permittee shall allow the Director, consistent with Title 39, Chapter 1, Idaho Code, to:

a. Enter the permitted facility. (4-1-88)

b. Inspect any records that must be kept under the conditions of the permit. (4-1-88)

c. Inspect any facility, equipment, practice, or operation permitted or required by the permit. (4-1-88)

d. Sample or monitor for the purpose of assuring permit compliance, any substance or any parameter at the facility. (4-1-88)

06. Reporting. The permittee shall report to the Director under the circumstances and in the manner specified in this section: (4-1-88)

a. In writing at least thirty (30) days before any planned physical alteration or addition to the permitted facility or activity if that alteration or addition would result in any significant change in information that was submitted during the permit application process. When the alteration or addition results in a need for a major modification, such alteration or addition shall not be made prior to Department approval issued in accordance with these rules. (~~4-1-88~~)()

b. In writing thirty (30) days before any anticipated change which would result in noncompliance with any permit condition or these rules. (4-1-88)

c. Orally within twenty-four (24) hours from the time the permittee became aware of any noncompliance which may endanger the public health or the environment at telephone numbers provided in the permit by the Director. (4-1-88)

d. In writing as soon as possible but within five (5) days of the date the permittee knows or should know of any noncompliance unless extended by the Department. This report shall contain: (4-1-88)

i. A description of the noncompliance and its cause; (4-1-88)

ii. The period of noncompliance including to the extent possible, times and dates and, if the noncompliance has not been corrected, the anticipated length of time it is expected to continue; and (~~4-1-88~~)()

iii. Steps taken or planned, including timelines, to reduce or eliminate the continuance or reoccurrence of the noncompliance. (~~4-1-88~~)()

e. In writing as soon as possible after the permittee becomes aware of relevant facts not submitted or incorrect information submitted, in a permit application or any report to the Director. Those facts or the correct information shall be included as a part of this report. (4-1-88)

07. Minimize Impacts. The permittee shall take all necessary actions to eliminate and correct any adverse impact on the public health or the environment resulting from permit noncompliance. (4-1-88)

08. Compliance with “Ground Water Quality Rule.” Permits issued pursuant to these rules shall require compliance with IDAPA 58.01.11, “Ground Water Quality Rule.” ()

501. -- 599. (RESERVED).

600. SPECIFIC PERMIT CONDITIONS.

01. Basis for Specific Permit Conditions. Conditions necessary for the protection of the environment and the public health may differ from facility to facility because of varying environmental conditions and wastewater compositions. The Director may establish, on a case-by-case basis, specific permit conditions. Specific conditions shall be established in consideration of characteristics specific to a facility and inherent hazards of those characteristics. Such characteristics include, but are not limited to: (4-1-88)

- a. Chemical, biological, physical, and volumetric characteristics of the wastewater; (4-1-88)
- b. Geological and climatic nature of the facility site; (4-1-88)
- c. Size of the site and its proximity to population centers and to ground and surface water; (4-1-88)
- d. Legal considerations relative to land use and water rights; (4-1-88)
- e. Techniques used in wastewater distribution and the disposition of that vegetation exposed to wastewaters; (4-1-88)
- f. Abilities of the soils and vegetative covers to treat the wastewater without undue hazard to the environment or to the public health; and (4-1-88)
- g. The need for monitoring and record keeping to determine if the facility is being operated in conformance with its design and if its design is adequate to protect the environment and the public health. (4-1-88)

02. Duration of Permit. The permit shall be effective for a fixed term of not more than ~~five~~ ten (~~5~~10) years. (~~4-1-88~~)()

03. Limitations to Operation. Conditions of the permit may specify or limit: (4-1-88)

- a. Wastewater composition; (4-1-88)
- b. Method, manner, and frequency of wastewater treatment; (4-1-88)
- c. Wastewater pretreatment requirements; (4-1-88)
- d. Physical, chemical, and biological characteristics of a land treatment facility; and (4-11-06)
- e. Any other condition the Director finds necessary to protect public health or environment. (4-1-88)

04. Compliance Schedules. The Director may establish a compliance schedule for existing facilities as part of the permit conditions including: (4-1-88)

a. Specific steps or actions to be taken by the permittee to achieve compliance with applicable requirements or final permit conditions; (4-1-88)

b. Dates by which those steps or actions are to be taken; and (4-1-88)

c. In any case where the period of time for compliance exceeds one (1) year the schedule may also establish interim requirements and the dates for their achievements. (4-1-88)

05. Monitoring Requirements. Any facility may be subject to monitoring requirements including, but not limited to: (4-1-88)

a. The installation, use, and maintenance of monitoring equipment; (4-1-88)

b. Monitoring or sampling methodology, frequency, and locations; (4-1-88)

c. Monitored substances or parameters; (4-1-88)

d. Testing and analytical procedures; and (4-1-88)

e. Reporting requirements including both frequency and form. (4-1-88)

~~**06. Rapid Infiltration Systems.** The following minimum treatment requirements are established for land application of wastewater using rapid infiltration methods and systems. (4-11-06)~~

~~a. Suspended solids content of wastewater which includes organic and inorganic particulate matter shall not exceed a thirty (30) day average concentration of one hundred (100) mg/L. (4-1-88)~~

~~b. Nitrogen (total as N) content of wastewater shall not exceed a thirty (30) day average concentration of twenty (20) mg/L. (4-1-88)~~

~~**07. Direct Use of Municipal Reclaimed Wastewater.** Treatment requirements for reuse facilities applicable to direct use of municipal reclaimed wastewater include, but are not limited to, the following. The applicable treatment requirements, buffer zones, access restrictions, disinfection requirements, uses, and other requirements are further described in the Classification Table in Subsection 600.08. (3-30-07)~~

~~a. Class A effluent is municipal reclaimed wastewater that may be used under particular circumstances for irrigation, including residential irrigation at individual homes; ground water recharge using surface spreading, seepage ponds, or other unlined surface water features; ground water recharge using subsurface distribution; fire suppression from dedicated, marked hydrants and only by trained fire personnel, and not to be used in building sprinkler systems; dust suppression at construction sites; toilet flushing at industrial and commercial sites where only trained maintenance personnel have access to the plumbing for repair; or other uses acceptable to the Department. Class A effluent shall be oxidized, coagulated, clarified, and filtered, or treated by an equivalent process and adequately disinfected. Filtration approval requirements, nutrient removal requirements, turbidity limits requirements, monitoring~~

~~requirements, reliability and redundancy requirements, and distribution system requirements also apply. Class A treatment systems are required to be pilot tested or otherwise approved by the Department per Subsection 601.04 of these rules. Class A effluent shall be considered adequately disinfected if, at the point of compliance, the median number of total coliform organisms does not exceed two and two tenths (2.2) per one hundred (100) milliliters, and does not exceed twenty-three (23) per one hundred (100) milliliters in any confirmed sample, as determined from the bacteriological results of the last seven (7) days for which analyses have been completed. For ground water recharge using surface spreading, seepage ponds, and other unlined surface water features, IDAPA 58.01.11, "Ground Water Quality Rule," requirements apply. For Class A effluent, analysis shall be based on daily sampling during periods of use. The point of compliance for Class A effluent for total coliform shall be at any point in the system following final treatment and disinfection contact time. It is recommended but not required that the effluent also be disinfected following storage. Class A effluent for residential irrigation shall be applied only during periods of non-use.~~ (3-30-07)

~~**b.** Class B effluent is municipal reclaimed wastewater that may contact any edible portion of raw food crops; may be used to irrigate golf courses, parks, playgrounds, schoolyards and other areas where children are likely to have access or exposure; or may be used for toilet flushing at industrial and commercial sites where only trained maintenance personnel have access to the plumbing for repair. Class B effluent shall be oxidized, coagulated, clarified, and filtered, or treated by an equivalent process and adequately disinfected. New Class B treatment systems are required to be pilot tested and approved by the Department prior to start up. Class B effluent shall meet the following turbidity limits. The daily arithmetic mean of all daily measurements of turbidity shall not exceed two (2) NTU, and turbidity shall not exceed five (5) NTU at any time. Turbidity shall be measured continuously. The turbidity standard shall be met prior to disinfection. For those systems that have in-line turbidimeters that are operating full-time, no additional monitoring for total suspended solids (TSS) is required. Class B effluent shall be considered adequately disinfected if, at the point of compliance, the median number of total coliform organisms does not exceed two and two tenths (2.2) per one hundred (100) milliliters, and does not exceed twenty-three (23) per one hundred (100) milliliters in any confirmed sample, as determined from the bacteriological results of the last seven (7) days for which analyses have been completed. For Class B effluent, analysis shall be based on daily sampling during periods of application. The point of compliance for Class B effluent for total coliform shall be at any point in the system following final treatment and disinfection contact time. It is recommended but not required that the effluent also be disinfected following storage. Residual chlorine at the point of compliance shall be not less than one (1) mg/L free chlorine after a contact time of thirty (30) minutes at peak flow. If an alternative disinfection process is used, it must be demonstrated to the satisfaction of the Department that the alternative process is comparable to that achieved by chlorination with one (1) mg/L free chlorine after thirty (30) minutes contact time. Class B effluent shall be applied only during periods of non-use by the public.~~ (3-30-07)

~~**c.** Class C effluent is municipal reclaimed wastewater that may only contact the inedible portion of raw food crops; may be used to irrigate orchards and vineyards during the fruiting season, if no fruit harvested for raw use comes in contact with the irrigation water or ground or will only contact the inedible portion of raw food crops; may be used to irrigate cemeteries, vegetation on sides and medians of highways, and other areas where individuals have access or exposure; or may be used for toilet flushing at industrial and commercial sites where only trained maintenance personnel have access to the plumbing for repair. Class C effluent shall~~

~~be oxidized and adequately disinfected. Class C effluent shall be considered adequately disinfected if, at the point of compliance, the median number of total coliform organisms does not exceed twenty three (23) per one hundred (100) milliliters, and does not exceed two hundred thirty (230) per one hundred (100) milliliters in any confirmed sample as determined from the bacteriological results of the last five (5) days for which analyses have been completed. For Class C effluent, analysis shall be based on weekly sampling during periods of application. The point of compliance for Class C effluent for total coliform shall be at any point in the system following final treatment and disinfection contact time. Class C effluent shall be applied only during periods of non-use by the public.~~ (3-30-07)

~~**d.** Class D effluent is municipal reclaimed wastewater that is used to irrigate fodder, seed, or processed food crops and is oxidized and adequately disinfected. Class D effluent shall be considered adequately disinfected if, at some location in the treatment process, the median number of total coliform organisms does not exceed two hundred thirty (230) per one hundred (100) milliliters, not to exceed two thousand three hundred (2300) per one hundred (100) milliliters in any confirmed sample, as determined from the bacteriological results of the last three (3) days for which analyses have been completed. For Class D effluent, analysis shall be based on monthly sampling during periods of application. The point of compliance for Class D effluent for total coliform shall be at any point in the system following final treatment and disinfection contact time. Animals shall not be grazed on land where Class D municipal wastewater is applied, and animals shall not be fed harvested vegetation irrigated in this manner within two (2) weeks of application.~~ (4-11-06)

~~**e.** Class E effluent is municipal reclaimed wastewater that is used to irrigate forested sites where public access is restricted and the municipal wastewater shall be of at least primary effluent quality. Animals shall not be grazed on land where Class E municipal wastewater is applied, and animals shall not be fed harvested vegetation irrigated in this manner within four (4) weeks of application.~~ (4-11-06)

~~**08. Direct Use of Municipal Reclaimed Wastewater — Classification Table.** The following table provides a brief summary of the requirements for direct use of municipal reclaimed wastewater outlined in Subsection 600.07. If there are discrepancies between Subsections 600.07 and 600.08, the requirements of Subsection 600.07 prevail.~~

<i>Classification Table</i>					
<i>Classification</i>	<i>Class-A</i>	<i>Class-B</i>	<i>Class-C</i>	<i>Class-D</i>	<i>Class-E</i>
<i>Treatment</i>	<i>This is a partial list – see Section 601 for more detail: Oxidized, clarified, and coagulated, with filtration approval requirements or treated by an equivalent process, plus nutrient removal requirements, turbidity limits requirements, adequately disinfected and tested.</i>	<i>Oxidized, coagulated, clarified, and filtered, or treated by an equivalent process, turbidity limits requirements, and adequately disinfected and tested.</i>	<i>Oxidized and adequately disinfected</i>	<i>Oxidized and adequately disinfected</i>	<i>At least primary effluent quality</i>
<i>Disinfection</i>	<i>Total coliform organisms does not exceed two and two tenths (2.2) per one hundred (100) milliliters</i>	<i>Total coliform organisms does not exceed two and two tenths (2.2) per one hundred (100) milliliters</i>	<i>Total coliform organisms does not exceed twenty three (23) per one hundred (100) milliliters</i>	<i>Total coliform organisms does not exceed two hundred thirty (230) per one hundred (100) milliliters</i>	<i>Total coliform organisms up to “too numerous to count”</i>

Classification Table					
Classification	Class-A	Class-B	Class-C	Class-D	Class-E
Uses	May be used for residential irrigation at individual homes; ground water recharge using surface spreading; seepage ponds or other unlined surface water features; ground water recharge using subsurface distribution; fire suppression from dedicated, marked hydrants; dust suppression at construction sites; toilet flushing at industrial and commercial sites; or Class B, C, D, or E uses. Other requirements apply for ground water uses. See Subsection 600.07.a.	May contact any edible portion of raw food crops; may be used to irrigate golf courses, parks, playgrounds, schoolyards; may be used for toilet flushing at industrial and commercial sites; or Class C, D, or E uses. See Subsection 600.07.b.	May be used to irrigate orchards and vineyards during the fruiting season, if no fruit harvested for raw use comes in contact with the irrigation water or ground, or will only contact the unedible portion of raw food crops; may be used to irrigate cemeteries or roadside vegetation; may be used for toilet flushing at industrial and commercial sites; or Class D or E uses. See Subsection 600.07.c.	May be used to irrigate fodder, seed, or processed food crops; or Class E uses. See Subsection 600.07.d.	May be used to irrigate forested sites. See Subsection 600.07.e.
Access-Restriction	Irrigated during periods of non-use.	Irrigated during periods of non-use by the public.	Irrigated during periods of non-use by the public.	Public access restricted.	Public access restricted.
Signing and Posting	See Subsection 601.02	Site specific— See Idaho Guidance for The Reclamation and Reuse of Municipal and Industrial Wastewater	Site specific— See Idaho Guidance for The Reclamation and Reuse of Municipal and Industrial Wastewater	Site specific— See Idaho Guidance for The Reclamation and Reuse of Municipal and Industrial Wastewater	Site specific— See Idaho Guidance for The Reclamation and Reuse of Municipal and Industrial Wastewater

Classification Table					
Classification	Class-A	Class-B	Class-C	Class-D	Class-E
Buffer Distances	No effluent is allowed to be applied to surface waters in those circumstances when an NPDES Permit is required. One hundred (100) foot minimum to drinking water wells.	Site specific-- See Idaho Guidance for The Reclamation and Reuse of Municipal and Industrial Wastewater. No effluent is allowed to be applied to surface waters in those circumstances when an NPDES Permit is required.	Site specific-- See Idaho Guidance for The Reclamation and Reuse of Municipal and Industrial Wastewater. No effluent is allowed to be applied to surface waters in those circumstances when an NPDES Permit is required.	Site specific-- See Idaho Guidance for The Reclamation and Reuse of Municipal and Industrial Wastewater. No effluent is allowed to be applied to surface waters in those circumstances when an NPDES Permit is required.	1000 ft. to inhabited dwellings and areas accessible to the public. No effluent is allowed to be applied to surface waters in those circumstances when an NPDES Permit is required.
Grazing	Grazing allowed only with approved grazing management plan.	Grazing allowed only with approved grazing management plan.	Grazing allowed only with approved grazing management plan.	Grazing not allowed.	Grazing not allowed.

(3-30-07)

~~601. CLASS A EFFLUENT MUNICIPAL RECLAIMED WASTEWATER--ADDITIONAL REQUIREMENTS.~~

~~**01. Engineering Report.** Engineering reports and application materials for new Class A effluent municipal reclaimed wastewater systems or major upgrades to Class A effluent municipal reclaimed wastewater systems shall be submitted to the Department with the application and must be approved by the Department prior to permit issuance. The engineering report shall include, but not be limited to, the following items as applicable: purpose; approach; development of alternatives; technical, financial, managerial, and legal issues; emergency response and security; operation and maintenance; consideration of alternatives for disposal of unanticipated excess effluent that does not meet Class specifications; pilot testing; client use issues; potential markets for reclaimed wastewater; potential sources of wastewater; public involvement and perception; targeted markets for reclaimed wastewater; allocation of reclaimed wastewater; preliminary investigations; staff development; treatment system upgrades to meet Class A requirements; distribution system development and schedule; new development infrastructure; reservoir or booster capacity; water balance calculations; costs; applicable regulations; and potential funding sources. This engineering report shall be stamped, dated and signed in accordance with Idaho Board of Registration of Professional Engineers and~~

Professional Land Surveyors, IDAPA 10.01.02, "Rules of Professional Responsibility." (3-30-07)

~~**02. Distribution System Requirements.** Class A distribution systems and the continued distribution systems of all of its customers shall have specific requirements including, but not limited to:~~ (4-6-05)

~~**a.** Any person or agency that is planning to construct all or part of the distribution system must obtain a plan and specification approval from the Department prior to beginning construction. Where Class A effluent is to be provided by pressure pipeline, the following applicable standards shall be used as guidance: the current edition of "Recommended Standards for Wastewater Facilities — Great Lakes Upper Mississippi River Board of State Sanitary Engineers," the "AWWA Manual M24" Chapter 4 for dual water systems, and the current edition of "Idaho Standards for Public Works Construction." The above guidance documents shall be used for all new systems constructed after April 1, 2005. Requirements for irrigation systems proposed for conversion from use of non-Class A effluent water to use with Class A effluent will be considered on a case-by-case basis considering protection of public health and the environment.~~ (4-6-05)

~~**b.** Distribution Lines.~~ (4-6-05)

~~**i.** Minimum Separation.~~ (4-6-05)

~~(1) Horizontal Separation. Class A effluent distribution mains parallel to potable (culinary) water mains shall be installed in accordance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 542.07. Class A effluent distribution mains parallel to sanitary sewer mains shall be installed at least five (5) feet horizontally from the sanitary sewer main if the sanitary sewer main is located above the Class A effluent main, and three (3) feet horizontally from the sanitary sewer main if the sanitary sewer main is located below the Class A effluent main.~~ (3-30-07)

~~(2) Vertical Separation. At crossings of Class A effluent distribution mains with potable water mains and sanitary sewer mains, the order of the mains from lowest in elevation to highest should be: sanitary sewer main, Class A effluent main, and potable water main. A minimum of eighteen (18) inches vertical separation between each of these utilities shall be provided as measured from outside of pipe to outside of pipe. The crossings shall be arranged so that the Class A effluent main joints will be equidistant and as far as possible from the potable water main joints and the sanitary sewer main joints. If the Class A effluent water main must cross above the potable water main, the vertical separation shall be a minimum eighteen (18) inches, the Class A effluent main shall be supported to prevent settling, and the Class A effluent main shall be encased in a continuous pipe sleeve to a distance on each side of the crossing equal to ten (10) feet. If the Class A effluent main must cross below the sanitary sewer main, the vertical separation shall be a minimum eighteen (18) inches and the Class A effluent main shall be encased in a continuous pipe sleeve to a distance on each side of the crossing equal to ten (10) feet.~~ (3-30-07)

~~(3) Special Provisions. Where the horizontal and/or vertical separation as required above cannot be maintained, special construction requirements shall be provided in accordance with requirements in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Section~~

~~542, for protection of potable water mains. (3-30-07)~~

~~ii. Class A Effluent Pipe Identification. (4-6-05)~~

~~(1) General. All new buried pipe, including service lines, valves, and other appurtenances, shall be colored purple, Pantone 512 or equivalent. If fading or discoloration of the purple pipe is experienced during construction, identification tape or locating wire along the pipe is required. Label piping every ten (10) feet "Caution: Reclaimed Wastewater - Do Not Drink" in both Spanish and English lettering. (3-30-07)~~

~~(2) Identification Tape. If identification tape is installed along with the purple pipe, it shall be prepared with white or black printing on a purple field, color Pantone 512 or equivalent, having the words, "Caution: Reclaimed Wastewater - Do Not Drink" in both Spanish and English lettering. The overall width of the tape shall be at least three (3) inches. Identification tape shall be installed eighteen (18) inches above the transmission pipe longitudinally, shall be centered over the pipe, and shall run continuously along the length of the pipe. (3-30-07)~~

~~iii. Conversion of Existing Drinking Water or Irrigation Water Lines. Existing water lines that are being converted to use with Class A effluent or a combination of Class A effluent and irrigation water shall first be accurately located and comply with leak test standards in accordance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Section 542, and in coordination with the Department. The pipeline must be physically disconnected from any potable water lines and brought into compliance with current state cross connection rules and requirements (IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Section 543), and must meet minimum separation requirements set forth in these rules. If the existing lines meet approval of the water supplier and the Department based upon the requirements set forth in these rules, the lines shall be approved for Class A effluent distribution. If regulatory compliance of the system (accurate location, pressure testing, and verification of no cross connections) cannot be verified with record drawings, testing, televising, or otherwise, the lines shall be uncovered, inspected, and identified or otherwise verified to the Department's satisfaction prior to use. All accessible portions of the system must be retrofitted to meet the requirements of these rules. After conversion of the water or irrigation line to a Class A wastewater effluent line, the lines shall be marked as stated in Subsection 601.02.b.ii.(2) of these rules. (3-30-07)~~

~~iv. Valve Boxes and Other Surface Identification. All valves shall have locking valve covers that are non-interchangeable with potable water valve covers, and shall have an inscription cast on the top surface stating "Reclaimed Wastewater." Valve boxes shall meet the requirements of IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Section 542. All above ground pipes and pumps shall be consistently color coded (purple, Pantone 512) and marked to differentiate Class A effluent facilities from potable water facilities. (3-30-07)~~

~~v. Blow-off Assemblies. If either an in-line type or end-of-line type blow-off or drain assembly is installed in the system, a plan for proposed discharge or runoff locations shall be submitted to the Department for review and approval. (4-6-05)~~

~~e. Storage. If storage or impoundment of Class A effluent is provided, the following requirements apply: (4-6-05)~~

- ~~i. Fencing. No fencing is required by these rules, but may be required by local laws or ordinances. (4-6-05)~~
- ~~ii. Identification. All storage facilities shall be identified by signs prepared according to the requirements of Subsection 601.02.e.v. of these rules. Signs shall be posted on the surrounding fence at minimum five hundred (500) foot intervals and at the entrance of each facility. If there is no fence, signs shall be located at a minimum on each side of the facility or at minimum two hundred fifty (250) foot intervals or at all accessible points. (4-6-05)~~
- ~~iii. For systems supplying irrigation water for residential lawn irrigation, minimum storage requirements shall include sufficient volume for daily use patterns, precipitation events, etc., and an alternate disposal point during non-irrigation season. (4-6-05)~~
- ~~d. Pumping Facilities. (4-6-05)~~
- ~~i. Marking. All exposed and above ground piping, risers, fittings, pumps, valves, etc., shall be painted purple, Pantone 512. In addition, all piping shall be identified using an accepted means of labeling reading "Warning: Reclaimed Wastewater - Do Not Drink" in both Spanish and English lettering. In a fenced pump station area, signs shall be posted on the fence on all sides. (3-30-07)~~
- ~~ii. Seal Water. Any potable water used as seal water for reclaimed water pump seals shall be protected from backflow with a Department approved backflow prevention device or air gap. (4-6-05)~~
- ~~e. Other Requirements. (4-6-05)~~
- ~~i. Backflow Protection. In no case shall a direct connection be made between the potable and Class A effluent system. If it is necessary to put potable water into the Class A effluent distribution system, a Department approved reduced pressure principal device or air gap must be provided to protect the potable water system. (4-6-05)~~
- ~~ii. Drinking fountains, picnic tables, food establishments, and other public eating facilities shall be placed out of any spray irrigation area in which Class A effluent is used, or shall be otherwise protected from contact with the Class A effluent. Exterior drinking fountains, picnic tables, food establishments, and other public eating facilities shall be shown and called out on the construction plans. If no exterior drinking fountains, picnic tables, food establishments, or other public eating facilities are present in the design area, then it shall be specifically stated on the plans that none are to exist. (4-6-05)~~
- ~~iii. Equipment and Facilities. Any equipment or facilities such as tanks, temporary piping or valves, and portable pumps that have been or may be used with Class A effluent shall not be used with potable water or sewage. Any equipment or facilities such as tanks, temporary piping or valves, and portable pumps that have been or may be used with sewage shall not be used with Class A effluent or potable water. (4-6-05)~~
- ~~iv. Warning Labels. Warning labels shall be installed on designated facilities such as, but not limited to, controller panels and washdown or blow-off hydrants on water trucks, hose~~

~~bibs, and temporary construction services. The labels shall read, "Warning: Reclaimed Wastewater Do Not Drink" in both Spanish and English lettering. (3-30-07)~~

~~v. Warning signs. Where reclaimed water is stored or impounded, or used for irrigation in public areas, warning signs shall be installed and contain, at a minimum, one (1) inch purple letters (Pantone 512 or equivalent) on a white or other high contrast background notifying the public that the water is unsafe to drink. Signs may also have a purple background with white or other high contrast lettering. Warning signs and labels shall read, "Warning: Reclaimed Wastewater Do Not Drink" in both Spanish and English lettering. (3-30-07)~~

~~**03. Other Permits Addressed as Necessary.** The following other permits may be necessary for a particular facility but are not regulated under these rules: (4-6-05)~~

~~**a.** NPDES permits from the Environmental Protection Agency for surface water discharge. (4-6-05)~~

~~**b.** Injection well permits from Idaho Department of Water Resources. (4-6-05)~~

~~**04. Filtration Technology.** (3-30-07)~~

~~**a. Filtration Technology Acceptance Requirements.** All Class A effluent projects in Idaho must have written acceptance from the Department for their proposed filtration technology prior to submitting plans and specifications for approval. Except as provided in Subsections 601.04.b.i and 601.04.b.ii., the following approaches are methods by which this written acceptance may be obtained from the Department. Consultants and vendors shall submit written requests with accompanying product information to the Department's State Office Wastewater Program. (3-30-07)~~

~~i. Department acceptance based on previous similar projects in Idaho. (3-30-07)~~

~~ii. National approval by National Reuse Association, Water Environment Federation Research Foundation, NSF International, or other organization accepted by the Department. (3-30-07)~~

~~iii. The State of California Department of Health Services Treatment Technology Report for Recycled Water, <http://www.dhs.ca.gov/ps/ddwem/publications/waterrecycling/treatmenttechnology.pdf>. (3-30-07)~~

~~iv. Other methods accepted by the Department, including pilot testing. (3-30-07)~~

~~**b.** Filter Loading, Coagulation, and Acceptance Requirements. (3-30-07)~~

~~i. For mono, dual or mixed media gravity or pressure filtration systems, influent shall be coagulated, clarified and passed through an undisturbed bed of soils or filter media at a rate not to exceed five (5) gallons per minute per square foot. For traveling bridge automatic backwash filters, influent shall be coagulated, clarified and passed through an undisturbed bed of soils or filter media at a rate not to exceed two (2) gallons per minute per square foot. Coagulation may be waived if all of following are met: the filter effluent does not exceed two (2)~~

~~NTU, the filter influent is continuously measured, the filter influent turbidity does not exceed five (5) NTU, and automatically activated chemical addition or diversion facilities are provided in the event filter effluent turbidity exceeds five (5) NTU.~~ (3-30-07)

~~ii. Gravity or pressure filters as described in Subsection 601.04.b.i. are recognized as being acceptable filtration processes under these rules.~~ (3-30-07)

~~iii. Other granular media filters that have a continuous backwash feature, pulsed bed feature, or other feature that, in the determination of the Department, does not comply with Subsection 601.04.b.i.; membrane filters; or cloth filters must obtain acceptance in accordance with Subsection 601.04.a.~~ (3-30-07)

~~**05. Nutrient Removal Requirements.** Total nitrogen at the point of compliance shall not exceed ten (10) mg/L for ground water recharge systems, and thirty (30) mg/L for residential irrigation and other non-recharge systems, based on a monthly arithmetic mean as determined from weekly composite sampling. These limits may be much lower depending on the results of any applicable nutrient pathogen studies that may be required.~~ (4-11-06)

~~**06. Turbidity Requirements and Disinfection Requirements.**~~ (3-30-07)

~~a. One (1) in-line, continuously monitoring, recording turbidimeter is required for each treatment train after filtration and prior to disinfection.~~ (3-30-07)

~~b. Class A effluent shall meet the following turbidity limits. For systems utilizing sand or other granular media or cloth media, the daily arithmetic mean of all daily measurements of turbidity shall not exceed two (2) NTU, and turbidity shall not exceed five (5) NTU at any time. For systems utilizing membrane filtration, the daily arithmetic mean of all daily measurements of turbidity shall not exceed zero point two (0.2) NTU, and turbidity shall not exceed zero point five (0.5) NTU at any time.~~ (3-30-07)

~~c. Class A effluent shall be disinfected by either:~~ (3-30-07)

~~i. A chlorine disinfection process that provides a concentration/contact time (CT) of four hundred and fifty (450) milligram-minutes per liter (mg-min/L) measured at the end of the contact time with a modal contact time of not less than ninety (90) minutes based on peak day dry weather flow; or~~ (3-30-07)

~~ii. A disinfection process that, when combined with filtration, has been demonstrated to achieve 5-log inactivation of virus. Acceptance by the State of California Department of Health Services as published in their Treatment Technology Report for Recycled Water is one method to constitute such a demonstration.~~ (3-30-07)

~~**07. Reliability and Redundancy Requirements.**~~ (4-6-05)

~~a. Redundant Treatment Capabilities.~~ (3-30-07)

~~i. Class A treatment systems shall have redundant treatment capabilities able to treat peak day flow, Class A treatment systems shall also provide for;~~ (3-30-07)

- ~~(1) An alternative disposal option; or (3-30-07)~~
- ~~(2) Diversion to adequate lined storage capable of storing seven (7) days of effluent; or (3-30-07)~~
- ~~(3) Equivalent back-up system. (3-30-07)~~
- ~~ii. Each of these three (3) alternatives must be automatically activated if turbidity exceeds or chlorine residual drops below the instantaneous required value for more than five (5) minutes, or if the alternative filtration/ disinfection system is not achieving its required 5-log removal/inactivation of virus for more than five (5) minutes. Peak flow is defined for the purpose of Subsection 601.07 to mean the peak day flow of the plant anticipated for the season in which Class A effluent is being produced. The maximum number of times a facility could exceed on this basis is twice in one (1) week, both of which times are required to be immediately reported. Failure to report or exceeding more than twice in one (1) week are sufficient grounds for the Department to require the system to be shut down for inspection and repair. (3-30-07)~~
- ~~b. Redundant facilities, including, but not limited to, monitoring equipment and treatment trains shall be required. (4-6-05)~~
- ~~e. Standby Power sufficient to maintain all treatment and distribution works shall be required for the Class A effluent use. An alternative to this is to provide standby power sufficient for basic treatment and for automatic by-pass of filtration directly to an alternative permitted disposal option. (3-30-07)~~
- ~~d. Standby treatment filter units in fully operable condition capable of treating peak flow, with the largest filter unit out of service, shall be plumbed and wired in place for immediate use. Peak flow is defined for the purpose of this rule to mean the peak day flow of the plant anticipated for the season in which Class A effluent is being produced. An alternative to this is automatic by-pass of filtration directly to an alternative permitted disposal option. (3-30-07)~~
- ~~08. Other Class A Effluent Requirements. (4-6-05)~~
- ~~a. Minimum treatment system size shall be ten thousand (10,000) gallons per day of wastewater flow being treated. (4-11-06)~~
- ~~b. Five (5) Day Biochemical Oxygen Demand (BOD5) shall not exceed five (5) mg/L for ground water recharge systems, and ten (10) mg/L each for residential irrigation and other non-recharge systems, based on a monthly arithmetic mean as determined from weekly composite sampling. (3-30-07)~~
- ~~e. The pH as determined by daily grab samples or continuous monitoring shall be between six point zero (6.0) and nine point zero (9.0) inclusive. (4-11-06)~~
- ~~d. For any type of ground water recharge system, the Class A effluent must also meet ground water quality standards per IDAPA 58.01.11, "Ground Water Quality Rule," at the point of compliance, and comply with the remaining sections of the "Ground Water Quality Rule." For~~

~~these types of ground water recharge systems utilizing Class A effluent municipal reclaimed wastewater, the applicant shall propose to the Department for review and approval, the applicable testing requirements for the effluent as it relates to the primary and secondary ground water standards, as well as background ground water quality. Ground water recharge site locations shall be a minimum of one thousand (1000) feet from any down gradient drinking water extraction well and shall also provide for a minimum of six (6) months time of travel in the aquifer prior to withdrawal. The minimum requirements for site location and aquifer storage time may also be greater depending on any source water assessment zone studies for public drinking water wells in the area. The owners of these systems must control the ownership of this down gradient area to prohibit future wells from being drilled in the impact zone of the ground water recharge system. The Idaho Department of Water Resources requires additional permits for ground water injection wells.~~ (4-11-06)

~~e. A filter to waste operational criteria is required for all Class A effluent filtration facilities for each time a filter starts up. The filter will automatically filter to waste until the effluent meets the required turbidity standard.~~ (4-6-05)

~~f. Additional information in the form of reports by qualified soil scientists, professional geologists, professional engineers, or other qualified individuals relating to environmental assessments, nutrient management plans, or water rights issues shall be submitted to the Department at the pre-application conference or with the application and must be approved by the Department prior to permit issuance.~~ (4-6-05)

~~g. Requirements for Class A effluent distribution system operators. All operators of Class A effluent distribution systems, including operators of distribution systems that utilize a combination of Class A effluent and other irrigation waters, operators of the distribution system from the wastewater treatment plant to the point of compliance or point of use or point of sale, as applicable, and those operators that are employed by buyers of the Class A effluent for subsequent use, including home occupants, shall be required to sign a utility user agreement provided by the utility providing the Class A effluent that states that the user acknowledges that the user understands the origin of the effluent and the concept of agronomic rate for applying the Class A effluent. Contracts for sale of Class A effluent for subsequent use shall also include these requirements. Individual homeowners are allowed to operate or maintain Class A effluent distribution systems. Providers of the Class A effluent shall undertake a public education program within its service area to teach potential customers the benefits and responsibilities of using Class A effluent~~ (3-30-07)

~~h. Requirements for mixing Class A effluent with other irrigation waters. Mixing Class A effluent with other irrigation waters may be conducted in a pipe to pipe manner if both the other irrigation water source and the Class A source are protected by Department approved backflow devices. Class A effluent may be mixed with other irrigation water in an unlined pond if the Class A effluent is permitted for aquifer recharge. Class A effluent that is permitted for irrigation only and not aquifer recharge may be mixed with other irrigation water only in a lined pond. Water from these mixed ponds may then be used for permitted Class A uses. If any of the water from these mixed ponds ultimately discharges to a canal, drain or other surface water, an NPDES permit may be required due to the presence of effluent in the mixed water. A downstream water user does not need a permit under these rules when mixed effluent/irrigation water is used after it is discharged, in accordance with these rules, to a canal, drain or other surface water.~~

(3-30-07)

~~602. DEMONSTRATION OF TECHNICAL, FINANCIAL, AND MANAGERIAL CAPACITY OF CLASS A EFFLUENT RECLAIMED WASTEWATER SYSTEMS.~~

~~No person shall proceed, or cause to proceed, with construction of a new class A effluent reclaimed wastewater system until it has been demonstrated to the Department that the new Class A effluent reclaimed wastewater system will have adequate technical, financial, and managerial capacity. Demonstration of capacity shall be submitted to the Department prior to or concurrent with the submittal of plans and specifications, as required in Section 39-118, Idaho Code, and Subsection 601.02.a. of these rules. The Applicant must obtain Department approval of the new system capacity demonstration prior to permit issuance and construction.~~ (4-6-05)

~~01. Technical Capacity. In order to meet this requirement, the Class A effluent reclaimed wastewater system shall submit documentation to demonstrate the following:~~ (4-6-05)

~~a. The system meets the relevant design, construction, operating and maintenance requirements of these rules;~~ (4-6-05)

~~b. The system has an adequate and consistent source of wastewater;~~ (4-6-05)

~~c. A security plan is in place to protect the wastewater source and deal with emergencies;~~ (4-6-05)

~~d. The system has trained personnel with an understanding of the technical and operational characteristics of the system;~~ (4-6-05)

~~e. A plan for cross-connection control;~~ (4-6-05)

~~f. Procedures for emergency response; and~~ (4-6-05)

~~g. Quality assurance and quality control plans.~~ (4-6-05)

~~02. Financial Capacity. A demonstration of financial capacity must include, but is not limited to, the following information:~~ (4-6-05)

~~a. Documentation that organizational and financial arrangements are adequate to construct and operate the Class A effluent reclaimed wastewater distribution system in accordance with these rules. This information can be provided by submitting estimated construction, operation, and maintenance costs, letters of credit, or other access to financial capital through public or private sources and, if available, a certified financial statement;~~ (4-6-05)

~~b. Demonstration of revenue sufficiency that includes, but is not limited to, billing and collection procedures, a proposed rate structure which is affordable and ensures availability of operating funds, revenues for depreciation and reserves, and the ability to accrue a capital replacement fund. A preliminary operating budget shall be provided;~~ (4-6-05)

~~c. Adequate fiscal controls shall be demonstrated; and~~ (4-6-05)

~~d. Equipment inventory controls shall be in place. (4-6-05)~~

~~**03. Managerial Capacity.** In order to demonstrate adequate managerial capacity, the owner and/or operator of a new Class A effluent reclaimed wastewater system shall submit at least the following information to the Department: (4-6-05)~~

~~a. Clear documentation of legal ownership of the Class A effluent reclaimed wastewater system, including collection, treatment and effluent distribution systems, and any plans that may exist for transfer of that ownership on completion of construction or after a period of operation; (4-6-05)~~

~~b. The name, address, and telephone number of the person who will be accountable for ensuring that the Class A effluent reclaimed wastewater system is in compliance with these rules; (4-6-05)~~

~~c. The name, address, and telephone number of the system operator; (4-6-05)~~

~~d. A description of the manner in which the wastewater system will be managed. By-laws, restrictive covenants, articles of incorporation, or procedures and policy manuals which describe the management organization structure are a means of providing this information; (4-6-05)~~

~~e. Personnel management policies and a description of staffing, including training, experience, certification or licensing, and continuing education completed by the Class A effluent reclaimed wastewater system staff; (4-6-05)~~

~~f. An explanation of how the wastewater system operators will establish and maintain effective communications and relationships between the wastewater system management, its customers, professional service providers, and any applicable regulatory agencies; and (4-6-05)~~

~~g. Evidence of short-term and long-term planning for future growth, equipment repair and maintenance, and long-term replacement of system components. (4-6-05)~~

~~**04. Consolidation.** In demonstrating new system capacity, the owner of the proposed new Class A effluent reclaimed wastewater system shall investigate the feasibility of obtaining water service from an established public water system. If such service is available, but the owner elects to proceed with an independent system, the owner shall explain why this choice is in the public interest in terms of environmental protection, affordability to water users, and protection of public health. (4-6-05)~~

~~**05. Exclusion.** New Class A effluent reclaimed wastewater systems which are public utilities as defined in Sections 61-104 (Corporation), 61-124 (Water System), 61-125 (Water Corporation), and 61-129 (Public Utility), Idaho Code, shall meet the regulatory requirements of the Idaho Public Utilities Commission (IPUC) in Chapter 1, Title 61, Idaho Code, Public Utilities Law, and IDAPA 31.01.01, "Rules of Procedure of the Idaho Public Utilities Commission." Such wastewater systems shall not be required to meet any requirements of Section 602 which are in~~

~~conflict with the provisions and requirements of the Idaho Public Utilities Commission. (4-6-05)~~

601. MUNICIPAL RECYCLED WATER - CLASSIFICATION, TREATMENT, USE.

01. Class A Recycled Water. In order to be classified as Class A recycled water, municipal wastewater shall be oxidized, coagulated, clarified, and filtered, or treated by an equivalent process and adequately disinfected. Class A treatment systems shall be reviewed by the Department and approved on a case-by-case basis. The Department may require pilot testing or demonstration prior to approval, or may condition approval upon the successful outcome of such testing or demonstration. ()

a. Disinfection Requirements. ()

i. Class A recycled water shall be disinfected by either: ()

(1) A chlorine disinfection process that provides a concentration/contact time (CT) of four hundred and fifty (450) milligram-minutes per liter (mg-min/L) measured at the end of the contact time based on total chlorine residual and a modal contact time of not less than ninety (90) minutes based on peak day dry weather flow; or ()

(2) A disinfection process that, when combined with filtration, has been demonstrated to achieve 5-log inactivation of virus. Acceptance by the State of California as published in their Treatment Technology Report for Recycled Water is one (1) method to constitute such a demonstration. ()

ii. The median number of total coliform organisms does not exceed two and two-tenths (2.2) per one hundred (100) milliliters, as determined from the bacteriological results of the last seven (7) days for which analyses have been completed. No sample shall exceed twenty-three (23) organisms per one hundred (100) milliliters in any confirmed sample. ()

iii. Sampling frequency and point of compliance. ()

(1) Class A recycled water shall be sampled and analyzed daily for total coliform when allowed uses specifically require Class A recycled water. The sampling frequency for Class A may be decreased and the alternate frequency will be determined based upon, but not limited to, the following: uses that are allowed with lower class recycled water, the volume of recycled water used, the disinfection method used, the demonstrated disinfection efficiency and reliability, the point of compliance, or other factors demonstrating that the alternative frequency is protective of public health. ()

(2) The point of compliance for Class A recycled water for total coliform shall be at any point in the system following final treatment and disinfection contact time. It is recommended that the recycled water also be disinfected following storage. ()

b. Turbidity Requirements. ()

i. Class A recycled water shall meet the following turbidity limits: ()

(1) For filtration systems utilizing sand or other granular media or cloth media, the daily arithmetic mean of all measurements of turbidity shall not exceed two (2) NTU, and turbidity shall not exceed five (5) NTU at any time. ()

(2) For filtration systems utilizing membrane filtration, the daily arithmetic mean of all measurements of turbidity shall not exceed zero point two (0.2) NTU, and turbidity shall not exceed zero point five (0.5) NTU at any time. The turbidity standard shall be met prior to disinfection. ()

ii. One (1) in-line, continuously monitoring, recording turbidimeter is required for each treatment train after filtration and prior to disinfection. ()

c. Nitrogen, pH and BOD5 Requirements. ()

i. Total nitrogen at the point of compliance shall not exceed ten (10) mg/L for ground water recharge systems and thirty (30) mg/L for residential irrigation and other non-recharge uses. These limits are based on a monthly arithmetic mean as determined from weekly composite sampling. These limits are a maximum value and may not be applicable if the results of an assessment of ground water quality impacts that may be required and is approved by the Department indicate that lower limits are necessary to protect existing ground water quality beneficial uses. ()

ii. The pH as determined by daily grab samples or continuous monitoring shall be between six point zero (6.0) and nine point zero (9.0). ()

iii. Five (5) Day Biochemical Oxygen Demand (BOD5) shall not exceed five (5) mg/L for ground water recharge systems, and ten (10) mg/L each for residential irrigation and other non-recharge systems, based on a monthly arithmetic mean as determined from weekly composite sampling. ()

02. Class B Recycled Water. In order to be classified as Class B recycled water, municipal wastewater shall be oxidized, coagulated, clarified, and filtered, or treated by an equivalent process and adequately disinfected. Class B treatment systems shall be reviewed by the Department and approved on a case-by-case basis. The Department may require pilot testing or demonstration prior to approval, or may condition approval upon the successful outcome of such testing or demonstration. ()

a. Disinfection Requirements. ()

i. Class B recycled water shall be disinfected by either: ()

(1) A chlorine disinfection process that provides a residual chlorine at the point of compliance of not less than one (1) mg/L total chlorine residual after a contact time of thirty (30) minutes at peak flow; or ()

(2) When an alternative disinfection process is used, it must be demonstrated to the satisfaction of the Department that the alternative process is comparable to that achieved by chlorination with a total chlorine residual of one (1) mg/L after a minimum contact time of thirty

(30) minutes. ()

ii. The median number of total coliform organisms does not exceed two and two-tenths (2.2) per one hundred (100) milliliters, as determined from the bacteriological results of the last seven (7) days for which analyses have been completed. No sample shall exceed twenty-three (23) organisms per one hundred (100) milliliters in any confirmed sample, as determined from the bacteriological results of the last seven (7) days for which analyses have been completed. ()

iii. Sampling frequency and point of compliance. ()

(1) Class B recycled water shall be sampled and analyzed daily for total coliform when allowed uses specifically require Class B recycled water. The sampling frequency for Class B may be decreased and the alternate frequency will be determined based upon, but not limited to, the following: uses that are allowed with lower class recycled water, the volume of recycled water used, the disinfection method used, the demonstrated disinfection efficiency and reliability, the point of compliance, or other factors demonstrating that the alternative frequency is protective of public health. ()

(2) The point of compliance for Class B recycled water for total coliform shall be at any point in the system following final treatment and disinfection contact time. It is recommended that the recycled water also be disinfected following storage. ()

b. Turbidity Requirements. Class B recycled water shall meet the following: ()

i. Turbidity Limits. The daily arithmetic mean of all measurements of turbidity shall not exceed five (5) NTU, and turbidity shall not exceed ten (10) NTU at any time. The turbidity standard shall be met prior to disinfection. ()

ii. Monitoring. One (1) in-line, continuously monitoring, recording turbidimeter is required for each treatment train after filtration and prior to disinfection. ()

03. Class C Recycled Water. In order to be classified as Class C recycled water, municipal wastewater shall be oxidized and adequately disinfected. ()

a. Disinfection Requirements. ()

i. The median number of total coliform organisms does not exceed twenty-three (23) per one hundred (100) milliliters, as determined from the bacteriological results of the last five (5) days for which analyses have been completed. No sample shall exceed two hundred thirty (230) per one hundred (100) milliliters in any confirmed sample. ()

ii. Sampling frequency and point of compliance. ()

(1) Class C recycled water shall be sampled and analyzed weekly for total coliform when allowed uses specifically require Class C recycled water. The sampling frequency for Class C may be decreased and the alternate frequency will be determined based upon, but not limited to, the following: uses that are allowed with lower class recycled water, the volume of recycled water used, the disinfection method used, the demonstrated disinfection efficiency and reliability, the

point of compliance, or other factors demonstrating that the alternative frequency is protective of public health. ()

(2) The point of compliance for Class C recycled water for total coliform shall be at any point in the system following final treatment and disinfection contact time. ()

04. Class D Recycled Water. In order to be classified as Class D recycled water, municipal wastewater shall be oxidized and adequately disinfected. ()

a. Disinfection Requirements. ()

i. The median number of total coliform organisms does not exceed two hundred thirty (230) per one hundred (100) milliliters, as determined from the bacteriological results of the last three (3) days for which analyses have been completed. No sample shall exceed two thousands three hundred (2300) organisms per one hundred (100) milliliters in any confirmed sample. ()

ii. Sampling frequency and point of compliance. ()

(1) Class D recycled water shall be sampled and analyzed monthly for total coliform when allowed uses specifically require Class D recycled water. The sampling frequency for Class D may be decreased and the alternate frequency will be determined based upon, but not limited to, the following: uses that are allowed with lower class recycled water, the volume of recycled water used, the disinfection method used, the demonstrated disinfection efficiency and reliability, the point of compliance, or other factors demonstrating that the alternative frequency is protective of public health. ()

(2) The point of compliance for Class D recycled water for total coliform shall be at any point in the system following final treatment and disinfection contact time. ()

05. Class E Recycled Water. In order to be classified as Class E recycled water, municipal wastewater shall meet at least primary effluent quality. ()

a. Class E recycled water has no disinfection requirements or applicable coliform standard. ()

b. Sampling frequency for total coliform. In general no sampling and analysis are required for Class E recycled water. In cases where sampling and analysis are required (e.g. buffer distance change reduction) the sampling frequency for total coliform will be established consistent with these rules in order to adequately protect human health and the environment. ()

602. MUNICIPAL RECYCLED WATER - CLASSIFICATION AND USES TABLES.

01. Municipal Recycled Water -- Classification Tables. The following tables provide a summary of the treatment requirements of municipal recycled water outlined in Section 601. If there are discrepancies between Sections 601 and 602, the requirements of Section 601 prevail.

TABLE 1 - CLASSIFICATION TABLE						
Classification		Class A	Class B	Class C	Class D	Class E
<u>Oxidized</u>		<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>
<u>Clarified</u>		<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Filtered</u>		<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Disinfected</u>		<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>
<u>Total coliform (organisms/100 milliliters)</u>	<u>Median results for last x-days for which analysis have been completed</u>	<u>2.2</u> <u>7-day median</u>	<u>2.2</u> <u>7-day median</u>	<u>23</u> <u>5-day median</u>	<u>230</u> <u>3-day median</u>	<u>No limit</u>
	<u>Maximum in any sample</u>	<u>23</u>	<u>23</u>	<u>230</u>	<u>2300</u>	<u>No limit</u>
	<u>Monitoring frequency</u>	<u>Daily, or as determined.</u>	<u>Daily or as determined.</u>	<u>Once weekly or as determined.</u>	<u>Once monthly or as determined.</u>	
<u>Disinfection requirements contact time</u>		<u>Contact time of 450 mg-min L with 90 min of modal time</u> <u>Or</u> <u>disinfection to 5-log inactivation of virus.</u>	<u>Total chlorine not less than 1mg/L after 30 min contact time at peak flow</u> <u>Or</u> <u>alternate process comparable to this</u>			

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TABLE 2 - CLASS A AND CLASS B ADDITIONAL REQUIREMENTS			
Classification		Class A	Class B
<u>Turbidity (NTU)</u>	<u>24-hr - mean. Not to exceed</u>	<u>Granular or cloth media - 2</u> <u>Membrane filter - 0.2</u>	<u>Granular or cloth media - 5</u>
	<u>Maximum, in any sample</u>	<u>Granular or cloth media - 5</u> <u>Membrane filter - 0.5</u>	<u>Granular or cloth media - 10</u>
	<u>Monitoring frequency</u>	<u>Continuous</u>	<u>Continuous</u>

TABLE 2 - CLASS A AND CLASS B ADDITIONAL REQUIREMENTS		
Classification	Class A	Class B
Maximum Total nitrogen (mg/L)	Ground water recharge - 10 Residential irrigation and other non-recharge uses - 30 or As required based on an analysis of ground water impacts	May be required based on an analysis of ground water impacts
BOD5 (mg/L) Monthly arithmetic mean, from weekly composite samples not to exceed	Ground water recharge - 5 Residential irrigation and other non-recharge uses - 10	
pH Daily grab samples or continuous monitoring	Between 6.0 and 9.0	

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02. Municipal Recycled Water - Uses. The following table provides a summary of municipal recycled water uses for which a specific classification is required. Other uses not listed here may be considered on a case-by-case basis and approved by the Department.

TABLE 3 - RECYCLED WATER USES					
Recycled Water Uses	Class A	Class B	Class C	Class D	Class E
Uses relating to Irrigation and buffers					
Buffers required	No	Yes	Yes	Yes	Yes
Fodder, fiber crops	Yes	Yes	Yes	Yes	Yes
Commercial timber, firewood	Yes	Yes	Yes	Yes	Yes
Processed food crops or "food crops that must undergo commercial pathogen-destroying processing before being consumed by humans"	Yes	Yes	Yes	Yes	No
Ornamental nursery stock, or Christmas trees	Yes	Yes	Yes	Yes	No
Sod and seed crops not intended for human ingestion	Yes	Yes	Yes	Yes	No
Pasture for animals not producing milk for human consumption	Yes	Yes	Yes	Yes	No
Pasture for animals producing milk for human consumption	Yes	Yes	Yes	No	No

TABLE 3 - RECYCLED WATER USES					
Recycled Water Uses	Class A	Class B	Class C	Class D	Class E
<u>Orchards and vineyards irrigation during the fruiting season, if no fruit harvested for raw use comes in contact with the irrigation water or ground, or will only contact the unedible portion of raw food crops</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>Highway medians and roadside vegetation irrigation on sides</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>Cemetery irrigation</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>Parks, playgrounds, and school yards during periods of non-use</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Parks, playgrounds, and school yards during periods of use</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Golf courses</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Food crops, including all edible food crops</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Residential landscape</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Uses at Industrial, Commercial, or Construction Sites</u>					
<u>Dust suppression at construction sites and control on roads and streets</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>Toilet flushing at industrial and commercial sites, when only trained maintenance personnel have access to plumbing for repairs</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>Nonstructural fire fighting</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>Cleaning roads, sidewalks and outdoor work areas</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>Backfill consolidation around non-potable piping</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>Soil compaction</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>Commercial campus irrigation</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Fire suppression</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Snowmaking for winter parks, resorts</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Commercial laundries</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Ground Water Recharge</u>					
<u>Ground water recharge through surface spreading, seepage ponds or other unlined surface water features, such as landscape impoundments</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Subsurface Distribution</u>					
<u>Subsurface distribution.</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>

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603. MUNICIPAL RECYCLED WATER - ACCESS, EXPOSURE AND SIGNAGE.

01. Class A Recycled Water. When using Class A recycled water the public and personnel at the area of use must be notified that the water is recycled water and is not safe for drinking or human contact. Signs shall be posted and must state “Caution: Recycled Water - Do Not Drink”, or equivalent signage both in English and Spanish. ()

a. Class A distribution system identification and signage. ()

i. General. All new buried pipe conveying Class A Recycled Water, including service lines, valves, and other appurtenances, shall be colored purple, and the precise color used, e.g., Pantone 512, 522 or equivalent, shall be consistently used throughout the system. The precise color proposed for use shall be identified in the plans and specifications and reviewed by the Department during plan and specification review to ensure the pipes may be adequately identifiable and distinguishable. If fading or discoloration of the purple pipe is experienced during construction, identification tape or locating wire along the pipe is required. Label piping every ten (10) feet “Caution: Recycled Water - Do Not Drink” or equivalent signage in both Spanish and English. ()

ii. Identification Tape. If identification tape is installed along with the purple pipe, it shall be prepared with white or black printing on a purple color field as approved by the Department, having the words, “Caution: Recycled Water - Do Not Drink” or equivalent signage in both Spanish and English. The overall width of the tape shall be at least three (3) inches. Identification tape shall be installed eighteen (18) inches above the transmission pipe longitudinally, shall be centered over the pipe, and shall run continuously along the length of the pipe. ()

iii. Valve Boxes and Other Surface Identification. All valves shall have locking valve covers that are non-interchangeable with potable water valve covers, and shall have an inscription cast on the top surface stating “Recycled Water.” All above ground pipes and pumps shall be consistently color coded (purple) and marked to differentiate Class A recycled water facilities from potable water facilities. ()

b. Class A recycled water pumping facilities identification and signage. ()

i. Marking. All exposed and above ground piping, risers, fittings, pumps, valves, etc., shall be painted purple color (Pantone 512, 522 or other equivalent product acceptable to the Department). In addition, all piping shall be identified using an accepted means of labeling reading “Caution: Recycled Water - Do Not Drink” or equivalent signage in both Spanish and English lettering. In a fenced pump station area, signs shall be posted on the fence on all sides. ()

ii. Warning Labels. Warning labels shall be installed on designated facilities such as, but not limited to, controller panels and washdown or blow-off hydrants on water trucks, hose bibs, and temporary construction services. The labels shall read, “Caution: Recycled Water - Do Not Drink” or equivalent signage, in both Spanish and English. ()

c. Class A Lagoon Identification and Signage. Where Class A recycled water is stored or impounded, or used for irrigation in public areas, warning signs shall be installed and

contain, at a minimum, one (1) inch purple letters (Pantone 512, 522 or other equivalent product acceptable to the Department) on a white or other high contrast background notifying the public that the water is unsafe to drink. Signs may also have a purple background with white or other high contrast lettering. Warning signs and labels shall read, "Caution: Recycled Water - Do Not Drink" or equivalent signage in both Spanish and English. ()

d. **Class A Additional Access Requirements.** Drinking fountains, picnic tables, food establishments, and other public eating facilities shall be placed out of any spray irrigation area in which Class A recycled water is used, or shall be otherwise protected from contact with the Class A recycled water. Exterior drinking fountains, picnic tables, food establishments, and other public eating facilities shall be shown and called out on the construction plans. If no exterior drinking fountains, picnic tables, food establishments, or other public eating facilities are present in the design area, then it shall be specifically stated on the plans that none are to exist. ()

02. Class B Recycled Water. When using Class B recycled water, the public and personnel at the use area must be notified that the water used is recycled water and is not safe for drinking or human contact. Signs must be posted and the signs must state that recycled water is used and is not safe for drinking or human contact. Signs shall be posted and must state "Caution: Recycled Water - Do Not Drink", or equivalent signage both in English and Spanish. ()

03. Class C Recycled Water. When using Class C recycled water for irrigation, the personnel at the use area must be notified that the water used is recycled water and is not safe for drinking. For the public, signs must be posted around the perimeter of the irrigation site stating that recycled water is used and is not safe for drinking or human contact. Signs shall be posted and must state "Warning: Recycled Water - Do Not Enter", or equivalent signage both in English and Spanish. ()

04. Class D Recycled Water. When using Class D recycled water for irrigation, the personnel at the use area must be notified that the water used is recycled water and is not safe for drinking. For the public, signs must be posted around the perimeter of the irrigation site stating that recycled water is used and is not safe for drinking or human contact. Signs shall be posted and must state "Warning: Recycled Water - Do Not Enter", or equivalent signage both in English and Spanish. ()

05. Class E Undisinfected Recycled Water. When using Class E undisinfected recycled water for irrigation, public access to the irrigation site shall be prevented using a physical barrier or other measure approved by the Department. Signs shall be posted around the perimeter of the irrigation site stating that recycled water is used and is not safe for drinking or human contact. Signs shall be posted and must state "Warning: Recycled Water - Do Not Enter", or equivalent signage both in English and Spanish. ()

604. REUSE FACILITIES - BUFFER DISTANCES.

01. Buffer Distance Considerations. Buffer distances shall be established for the following purposes: ()

a. Protect public health by limiting exposure to recycled water and conditions associated with reuse facilities; ()

b. Protect waters of the state, including surface water, ground water and drinking water supplies; and ()

c. Help ensure that the use of recycled water is restricted to within the physical boundaries of the reuse facilities. ()

02. Determining Buffer Distances. In determining buffer distances for inclusion in a reuse permit the Department will consider the following: ()

a. Characterization of the recycled water; ()

b. The method of irrigation; ()

c. The physical or vegetative barriers; ()

d. Microbial risk assessments; ()

e. Any applicable best management practices; ()

f. Environmental conditions, such as wind speed and direction; and ()

g. Any other information relevant to the purposes described in this section. ()

605. MUNICIPAL RECYCLED WATER -- PRELIMINARY ENGINEERING REPORTS.

Preliminary engineering reports shall comply with these rules and applicable provisions of IDAPA 58.01.16 "Wastewater Rules." Preliminary engineering reports for new municipal recycled water systems or major upgrades to municipal recycled water systems shall be submitted to the Department for review and approval prior to submittal of plans and specifications. ()

606. REUSE FACILITY - PLAN AND SPECIFICATION REVIEW.

All plans and specifications for the construction of new reuse facilities or modification or expansion to same shall be submitted to and approved by the Director in accordance with Chapter 1, Title 39, Idaho Code, and IDAPA 58.01.16, "Wastewater Rules." ()

607. MUNICIPAL RECYCLED WATER -- DISTRIBUTION PIPELINES.

01. Compliance with Wastewater Rules Required. The design and construction of municipal recycled water distribution pipelines shall comply with applicable provisions of IDAPA 58.01.16, "Wastewater Rules," Section 430. The design and construction of municipal recycled water distribution pipelines shall also comply with applicable provisions of IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems." Any person or agency that is planning to construct all or part of the distribution system must obtain a plan and specification approval from the Department prior to beginning construction. ()

a. Recycled water mains shall be treated as non-potable mains when considering their separation from potable water. Recycled water mains shall be treated as potable water mains

when considering their separation from sewers. ()

b. For a system that proposes to use an alternative to the distribution pipeline requirements in these rules, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," or IDAPA 58.01.16, "Wastewater Rules," the design engineer shall submit data to the Department for review and approval demonstrating that the installation of an alternative will protect public health and environment. ()

02. Additional Distribution System Requirements for Class A Recycled Water. Class A distribution systems and the continued distribution systems of all of its customers shall have specific requirements including, but not limited to the following. ()

a. Where Class A recycled water is to be provided by pressure pipeline, the following standards may be used as guidance: the current edition of "Recommended Standards for Wastewater Facilities - Great Lakes-Upper Mississippi River Board of State Sanitary Engineers," the "AWWA Manual M24" Chapter 4 for dual water systems, and the current edition of "Idaho Standards for Public Works Construction." ()

b. Conversion of Existing Drinking Water or Irrigation Water Lines. Requirements for irrigation systems proposed for conversion from use of non-Class A recycled water to use with Class A recycled water will be considered on a case-by-case basis considering protection of public health and the environment. Existing water lines that are being converted to use with Class A recycled water or a combination of Class A recycled water and irrigation water shall be accurately located, pressure tested and leakage tested prior to conversion in coordination with the Department. AWWA Standard(s) for pressure and leakage testing of drinking water lines shall be utilized on the lines to be converted. The pipeline must be physically disconnected from any potable water lines and brought into compliance with applicable cross connection rules and requirements in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Section 543, and must meet minimum separation requirements set forth in these rules. If the existing lines meet approval of the water supplier and the Department based upon the requirements set forth in these rules, the lines shall be approved for Class A recycled water distribution. If regulatory compliance of the system (accurate location, pressure testing, and verification of no cross connections) cannot be verified with record drawings, testing, televising, or otherwise, the lines shall be uncovered, inspected, and identified or otherwise verified to the Department's satisfaction prior to use. All accessible portions of the system must be retrofitted to meet the requirements of these rules. After conversion of the water or irrigation line to a Class A recycled water line, the lines shall be marked as stated in Subsection 603.01.a.iii. of these rules. ()

c. Blow-off Assemblies. If either an in-line type or end-of-line type blow-off or drain assembly is installed in the system, a plan for proposed discharge or runoff locations shall be submitted to the Department for review and approval. ()

d. Requirements for mixing Class A recycled water with other irrigation waters. Mixing Class A recycled water with other irrigation waters may be conducted in a pipe to pipe manner if both the other irrigation water source and the Class A source are protected by Department approved backflow devices. Class A recycled water may be mixed with other irrigation water in an unlined pond if the Class A recycled water is permitted for ground water recharge. Class A recycled water that is permitted for irrigation only and not ground water

recharge may be mixed with other irrigation water only in a lined pond. Water from these mixed ponds may then be used for permitted Class A uses. ()

e. Requirements for Class A recycled water distribution system operators. All operators of Class A recycled water distribution systems, including operators of distribution systems that utilize a combination of Class A recycled water and other irrigation waters, operators of the distribution system from the wastewater treatment plant to the point of compliance or point of use or point of sale, as applicable, and those operators that are employed by buyers of the Class A recycled water for subsequent use, including home occupants, shall be required to sign a utility user agreement provided by the utility providing the Class A recycled water that states that the user understands the origin of the effluent and the concept of agronomic rate for applying the Class A recycled water. Contracts for sale of Class A recycled water for subsequent use shall also include these requirements. Individual homeowners are allowed to operate or maintain Class A recycled water distribution systems. Providers of the Class A recycled water shall undertake a public education program within its service area to teach potential customers the benefits and responsibilities of using Class A recycled water. ()

608. MUNICIPAL RECYCLED WATER -- PUMPING STATIONS.

01. Pumping Station Requirements. All municipal recycled wastewater pumping stations shall comply with applicable provisions of IDAPA 58.01.16 "Wastewater Rules", Sections 440. ()

02. Additional Pumping Station Requirements for Recycled Water. ()

a. Backflow Protection-Seal Water. Any potable water used as seal water for recycled water pump seals shall be protected from backflow with a Department approved backflow prevention device or air gap. ()

b. Backflow Protection-Potable and Recycled Water. In no case shall a direct connection be made between the potable and recycled water system. If it is necessary to put potable water into the recycled water distribution system, a Department approved reduced pressure principal device or air gap must be provided to protect the potable water system. ()

c. Equipment and Facilities. Any equipment or facilities such as tanks, temporary piping or valves, and portable pumps that have been or may be used with recycled water shall not be used with potable water or sewage. Any equipment or facilities such as tanks, temporary piping or valves, and portable pumps that have been or may be used with sewage shall not be used with recycled water or potable water. ()

609. MUNICIPAL RECYCLED WATER -- LAGOONS.

01. Requirements for Municipal Recycled Water Lagoons. All new and existing lagoons for municipal recycled water shall comply with applicable provisions of IDAPA 58.01.16 "Wastewater Rules," Section 493. ()

02. Class A Recycled Water Lagoons. Surface water features, such as landscape impoundments used for Class A recycled water, that are not lined or sealed to prevent seepage

may be approved provided the ground water quality standards for ground water protection are met. ()

610. MUNICIPAL RECYCLED WATER -- CLASS A RECYCLED WATER FILTRATION.

01. Class A Filtration Technology Approval. The Department shall approve the following filter technologies for use in compliance with these rules: ()

a. Those approved and listed in the State of California Treatment Technology Report for Recycled Water, www.cdph.ca.gov/healthinfo/environhealth/water/pages/waterrecycling.aspx. ()

b. The Department may consider for approval filtration technologies other than those listed in the report referenced in Subsection 610.01.a. upon submission of a written request accompanied by all necessary product information. Approval of these filtration technologies shall be in accordance with procedures provided in the State of California Treatment Technology Report for Recycled Water. ()

02. Filter to Waste Requirement. The Department may require certain types of Class A recycled water filtration facilities to install and operate a filter to waste system that operates each time a filter starts up. Filter to waste systems shall automatically filter to waste until the effluent meets the required turbidity standard. ()

611. MUNICIPAL RECYCLED WATER -- RELIABILITY AND REDUNDANCY.

01. Reliability and Redundancy Requirements. The reliability and redundancy for all wastewater systems shall comply with the requirements in IDAPA 58.01.16 "Wastewater Rules." ()

02. Additional Reliability and Redundancy Requirements. Following are additional reliability and redundancy requirements for Class A recycled water: ()

a. Class A treatment systems shall have treatment capabilities able to treat peak day flow for the season in which Class A recycled water is being produced. ()

b. Class A treatment systems shall also provide for one (1) of the following alternative back-up systems: ()

i. Another permitted disposal option; or ()

ii. Diversion to adequate lined storage capable of storing Class A recycled water during a malfunction or emergency. ()

c. An alternative back-up system must be automatically activated if turbidity exceeds or chlorine residual drops below the instantaneous required value for more than five (5) minutes, or if the alternative filtration/ disinfection system is not achieving its required 5-log removal/ inactivation of virus for more than five (5) minutes. The maximum number of times a facility

could exceed on this basis is twice in one (1) week, both of which times are required to be immediately reported. Failure to report or exceeding more than twice in one (1) week are sufficient grounds for the Department to require the system to be shut down for inspection and repair. ()

d. Class A redundant monitoring equipment and automatic by-pass equipment must be provided. ()

e. Standby power sufficient to maintain all treatment and distribution works or to meet the requirements for an alternative back-up system shall be required for the Class A recycled water facilities. ()

612. DEMONSTRATION OF TECHNICAL, FINANCIAL, AND MANAGERIAL CAPACITY OF MUNICIPAL REUSE FACILITY.

01. Compliance with Wastewater Rules Required. All reuse facilities shall comply with applicable provisions of IDAPA 58.01.16 “Wastewater Rules,” Section 409. ()

02. Exclusion. New Class A recycled water systems which are public utilities as defined in Sections 61-104 (Corporation), 61-124 (Water System), 61-125 (Water Corporation), and 61-129 (Public Utility), Idaho Code, are governed by and must meet the regulatory requirements of Chapter 1, Title 61, Idaho Code, Public Utilities Law, and IDAPA 31.01.01, “Rules of Procedure of the Idaho Public Utilities Commission.” In any conflict arising out of the application of these rules and IDAPA 31.01.01, the provisions and requirements of the Idaho Public Utilities Commission shall prevail. ()

613. REUSE FACILITY - RAPID INFILTRATION SYSTEM.

Rapid infiltration systems shall be designed such that the beneficial uses of the waters of the state will not be injured. Prior to construction of a new recycled water system that includes as treatment rapid infiltration systems all plans and specification shall be submitted to and approved by the Director before construction can begin. The Preliminary Engineering Report shall include the parameters for the design of the rapid infiltration systems. ()

01. Design and Construction. Following are the design and construction criteria for rapid infiltration systems: ()

a. The system shall be designed to allow a relatively high rate of recycled water infiltration into the soil followed by rapid percolation; ()

b. The system shall consist of either two (2) or more cells which can be alternately loaded and rested, or one (1) cell preceded by an effluent storage or stabilization pond system. Where only one (1) cell is provided, the storage and stabilization pond(s) shall have sufficient capacity to allow intermittent loading of the rapid infiltration systems; ()

c. The rapid infiltration system shall be designed to provide even distribution of the recycled water and prevent erosion; ()

d. The system shall be designed to ensure that the subsurface soils have the capacity

to transmit the applied recycled water down and away from the basins at an acceptable rate to avoid excessive water mounding beneath the basin that would interfere with infiltration at the basins surface; and ()

e. The system shall be designed to ensure proper operation during the winter conditions in cold climate areas. ()

02. Discharge Requirements. Following are the discharge requirements for recycled water discharged to a rapid infiltration system: ()

a. The discharge to a rapid infiltration system may not exceed the hydraulic, organic, nitrogen, suspended solids or other limitations specified in the permit or plans developed pursuant to a permit requirement. In determining discharge limitations, the Department shall consider past operating performance, the ability of the soils to treat the pollutants in the recycled water, hydrogeologic characteristics of the site such as permeability and infiltration rates, and other relevant information; and ()

b. Compliance with IDAPA 58.01.11, “Ground Water Quality Rule,” and IDAPA 58.01.02, “Water Quality Standards” shall be ensured. ()

614. GROUND WATER RECHARGE - CLASS A RECYCLED WATER.

All ground water recharge systems shall comply with IDAPA 58.01.11, “Ground Water Quality Rule.” The minimum requirements for site location and aquifer storage time shall be based on site-specific modeling and any source water assessment zone studies for public drinking water wells in the area. The owners of these systems must control the ownership of this down gradient area to prohibit future wells from being drilled in the impact zone of the ground water recharge system. Authorization from the Idaho Department of Water Resources is required for ground water injection wells. ()

615. SUBSURFACE DISTRIBUTION OF RECYCLED WATER.

01. Subsurface Use of Recycled Water. The subsurface distribution and use of recycled water must be designed and located so that compliance with IDAPA 58.01.11, “Ground Water Quality Rule,” is maintained and pollutants cannot be reasonably expected to enter waters of the state in concentrations resulting in injury to beneficial uses. In addition, the subsurface distribution and use of recycled water shall comply with these rules, and with applicable IDAPA 58.01.03, “Individual/Subsurface Sewage Disposal Rules.” ()

02. Design and Construction. ()

a. The system shall be constructed to prevent surface runoff from entering the system. ()

b. Precautions shall be taken during construction of the subsurface distribution system to minimize compaction and prevent a reduction in soil infiltration rate. ()

c. Erosion control measures shall be taken during construction to prevent erosion of soil into surface water. ()

03. Discharge limitations. ()

a. Prior to discharge to a subsurface system, the wastewater shall be treated such that the recycled water is Class A, B, C or D quality. ()

b. The discharge to a subsurface distribution system may not exceed the hydraulic, organic, nitrogen, or other limitations specified in a permit or plans developed pursuant to a permit requirement. The Department shall consider past operating performance, the ability of the soils to treat the pollutants in the discharge, hydrogeologic characteristics of the site such as permeability and infiltration rates and other relevant information. ()

616. PERMIT FOR USE OF INDUSTRIAL RECYCLED WATER.

Industrial recycled water shall only be used in accordance with a permit issued pursuant to these rules. Permit conditions and limitations shall be developed by the Department on a case-by-case basis taking into account the specific characteristics of the wastewater to be recycled, the treatment necessary to ensure the use of such recycled water is in compliance with IDAPA 58.01.11, "Ground Water Quality Rule," and IDAPA 58.01.02, "Water Quality Standards." Unless otherwise indicated in this section, the permit application, processing and issuance procedures provided in this rule shall apply to industrial reuse permits. ()

01. Additional Application Contents. In addition to the requirements in Section 300 of these rules, a permit application for reuse of industrial recycled water shall include: ()

a. The source of the water and the projected rates and volumes; and ()

b. The chemical, biological, and physical characteristics of the industrial recycled water from each source. ()

02. Permit Content. The Department shall include the requirements of Section 500, Standard Permit Conditions, in all permits issued for use of industrial recycled water. The Department shall develop additional permit conditions on a case-by-case basis considering the following factors: ()

i. The risk to public health and the environment; ()

ii. The degree of public access to the site where the recycled water is used and the degree of human exposure anticipated; ()

iii. Any additional measures necessary to prevent nuisance conditions; ()

iv. Specific recycled water quality necessary for the intended type of reuse; and()

v. The means of application of the recycled water. ()

60317. -- 699. (RESERVED).

700. PERMIT MODIFICATION.

01. Modification of Permits. A permit modification may be initiated by the receipt of a request for modification from the permittee, or may be initiated by the Department if one (1) of more of the following causes for modification exist: ()

a. Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit. ()

b. New standards or regulations. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. ()

c. Compliance schedules. The Department determines good cause exists for modification of a compliance schedule or terms and conditions of a permit. ()

d. Non-limited pollutants. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which may cause an adverse impact to surface or ground waters. ()

e. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions. ()

f. When a treatment technology proposed, installed, and properly operated and maintained by the permittee fails to achieve the requirements of the permit. ()

012. Minor Modifications. Minor modifications are those which if granted would not result in any increased hazard to the environment or to the public health. ~~Such modifications shall be made by the Director.~~ If a permit modification satisfies the criteria for "minor modifications," the permit may be modified without issuance of a draft permit or public review. Minor modifications are normally limited to: (4-1-88)()

a. The correction of typographical errors or formatting changes; (4-1-88)()

b. Transfer of ownership or operational control, or responsible official; (4-1-88)()

c. A change in monitoring or reporting frequency requirements, or revision of a laboratory method; (4-1-88)()

d. Change compliance due date in a schedule of compliance, provided the new date does not exceed six (6) months; ()

e. Change or add a sampling location; ()

f. Change to a higher level of treatment without a change in end uses; ()

g. Change in terminology; ()

- h. Removal of an allowed use; ()
- i. Correct minor technical errors, such as citations of law, and citations of construction specifications; ()
- or i. Change in a contingency plan resulting in equal or more efficient responsiveness; ()
- k. Removal of acreage from irrigation without an increase in loadings. ()

023. Major Modifications. All modifications not considered minor shall be considered major modifications. The procedure for making major modifications shall be the same as that used for a new permit under these rules. Some examples of the major modifications are: (4-1-88)()

- a. Changes in the treatment system; ()
- b. Adding an allowed use; ()
- c. Changes to a lower (less treated) class of water; ()
- d. Addition of acreage used for irrigation; or ()
- e. Changes to less stringent discharge limitations. ()

701. -- 799. (RESERVED).

800. PERMIT TRANSFERABLE.

~~Permits shall be transferable to a new owner or operator provided that the permittee notifies the Director by requesting a minor modification of the permit before the date of transfer. (4-1-88)~~

01. General. A permit may be transferred only upon approval of the Department. No transfer is required for a corporate name change as long as the secretary of state can verify that a change in name alone has occurred. An attempted transfer is not effective for any purpose until approved in writing by the Department. ()

02. Request for Transfer. Either the permit holder (permittee) or the person to whom the permit is proposed to be transfer (transferee) shall submit to the department a request for transfer at least thirty (30) days before the proposed transfer date. The request for transfer shall include: ()

- a. Legal name and address of the permittee; ()
- b. Legal name and address of the transferee; ()
- c. Location and the common name of the facility; ()

- d.** Date of proposed transfer; ()
- e.** Sufficient documentation for the Department to determine that the transferee will meet the requirements listed in IDAPA 58.01.16 “Wastewater Rules,” Section 409, relating to technical, financial and managerial capacity; ()
- f.** A signed declaration by the transferee that the transferee has reviewed the permit and understands the terms of the permit; ()
- g.** A sworn statement that the request is made with the full knowledge and consent of the permittee if the transferee is submitting the request; ()
- h.** Identification of any judicial decree, compliance agreement, enforcement order, or other outstanding obligating instrument, the terms of which have not been met, along with legal instruments sufficient to address liabilities under such decree, agreement, order, or other obligating instrument; and ()
- i.** Any other information the director may reasonably require. ()
- 03. Effective Date of Transfer.** Responsibility for compliance with the terms and conditions of the permit and liability for any violation associated therewith is assumed by the transferee, effective on the date indicated in the approved transfer. ()
- 04. Compliance with Permit Conditions Pending Transfer Approval.** Prior to a transfer approval, the permittee shall continue to be responsible for compliance with the terms and conditions of the permit and be liable for any violation associated therewith, regardless of whether ownership or operational control of the permitted facility has been transferred. ()
- 05. Transferee Liability Prior to Transfer Approval.** If a proposed transferee causes or allows operation of the facility under his ownership or control before approval of the permit transfer, such transferee shall be considered to be operating without a permit or authorization required by these rules and may be cited for additional violations as applicable. ()
- 06. Compliance Record of Transferee.** The director may consider the prior compliance record of the transferee, if any, in the decision to approve or disapprove a transfer. ()

801. TEMPORARY CESSATION OF OPERATIONS AND CLOSURE.

01. Temporary Cessation. A permittee shall implement any applicable conditions specified in the permit for temporary cessation of operations. When the permit does not specify applicable temporary cessation conditions, the permittee shall notify the Director prior to a temporary cessation of operations at the facility greater than sixty (60) days in duration and any cessation not for regular maintenance or repair. Cessation of operations necessary for regular maintenance or repair of a duration of sixty (60) days or less are not required to notify the Department under this section. All notifications required under this section shall include a proposed temporary cessation plan that will ensure the cessation of operations will not pose a threat to human health or the environment.

()

02. Closure. A closure plan shall be required when a facility is closed voluntarily and when a permit is revoked or expires. A permittee shall implement any applicable conditions specified in the permit for closure of the facility. Unless otherwise directed by the terms of the permit or by the Director, the permittee shall submit a closure plan to the Director for approval at least ninety (90) days prior to ceasing operations. The closure plan shall ensure that the closed facility will not pose a threat to human health and the environment. Closure plan approval may be conditioned upon a permittee's agreement to complete such site investigations, monitoring, and any necessary remediation activities that may be required. ()

~~8012.~~ -- 919. (RESERVED).

920. PERMIT REVOCATION.

01. Conditions for Revocation. The Director may revoke a permit if the permittee violates any permit condition or these rules, or the Director becomes aware of any omission or misrepresentation of condition or information relied upon when issuing the permit. ~~(4-1-88)~~()

02. Notice of Revocation. Except in cases of emergency, the Director shall issue a written notice of intent to revoke to the permittee prior to final revocation. Revocation shall become final within thirty-five (35) days of receipt of the notice by the permittee, unless within that time the permittee requests an administrative hearing in writing. The hearing shall be conducted in accordance with IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality.” (5-3-03)

03. Emergency Action. If the Director finds the public health, safety or welfare requires emergency action, the Director shall incorporate findings in support of such action in a written notice of emergency revocation issued to the permittee. Emergency revocation shall be effective upon receipt by the permittee. Thereafter, if requested by the permittee in writing, the Director shall provide the permittee a revocation hearing and prior notice thereof. Such hearings shall be conducted in accordance with IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality.” (3-15-02)

04. Revocation and Closure. A permittee shall perform the closure requirements in a permit, the closure requirements of these rules, and complete all closure plan activities notwithstanding the revocation of the permit. ()

(BREAK IN CONTINUITY OF SECTIONS)

940. WAIVERS.

Waivers from the requirements of these rules may be granted by the Director on a case-by-case basis upon full demonstration by the person requesting the waivers that such activities for which the waivers are granted will not have a detrimental effect upon existing water quality and beneficial uses are adequately protected; ~~and:~~ ~~(4-11-06)~~()

- ~~01. Effect. That the proposed loadings on the site will be di-minimus in both quantity and quality; (4-11-06)~~
- ~~02. Treatment Requirements. That the treatment requirements are: (4-1-88)~~
- ~~a. Unreasonable with current technology; or (4-1-88)~~
- ~~b. Economically prohibitive. (4-1-88)~~

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.23 - RULES OF ADMINISTRATIVE PROCEDURE BEFORE THE BOARD OF ENVIRONMENTAL QUALITY

DOCKET NO. 58-0123-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-first Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105, 39-107 and 67-5206, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the [Idaho Administrative Bulletin, December 2, 2009, Vol. 09-12, pages 187 through 193](#). DEQ received no public comments; however, the proposed rule has been revised at Sections 052, 354, 355, 730, 740, 750, 791, and 801 for consistency with revisions made to the Idaho Administrative Procedure Act (APA) under House Bill 555. Under House Bill 555, the 2010 Idaho Legislature revised the APA so that the time periods for seeking reconsideration or judicial review of an agency action begin to run when the order is served upon the parties rather than the date the order is issued. The remainder of the rule has been adopted as proposed. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/admin/58_0123_0901_pending.cfm or by contacting the undersigned.

IDAHO CODE SECTION 39-107D STATEMENT: This rule does regulate an activity not regulated by the federal government. The federal government does not regulate administrative procedures for the state of Idaho; therefore, the rule revisions are not broader in scope or more stringent than federal law or regulations. This rule governs administrative procedures and is not a rule based on science or that proposes a standard necessary to protect human health or the environment. Therefore, the requirements of Section 39-107D(2) and (3), Idaho Code, are 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: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

Dated this 26th 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

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 39-105, 39-107 and 67-5206, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before December 16, 2009. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to make revisions to the Rules of Administrative Procedure Before the Board of Environmental Quality for clarification purposes and for consistency with the Idaho Administrative Procedure Act (APA) and the Environmental Protection and Health Act.

The proposed rule includes revisions to the following sections:

1. Section 052. Revisions made for consistency with Section 67-5273, Idaho Code.
2. Section 303. Revisions made to provide flexibility that would allow potential parties to enter into a tolling agreement.
3. Sections 353 through 355. Revisions made for clarity and to provide a time limit within which an intervenor, once granted permission to intervene, may file its response to the petition for contested case.
4. Section 720. Revisions made for clarity, to streamline the process, for consistency with Section 730, and for consistency with Sections 67-5244 and 67-5273, Idaho Code.
5. Section 730. Revisions made for clarity, to streamline the process, for consistency with Section 720, and for consistency with Sections 67-5245 and 67-5273, Idaho Code. Revisions made to this section remove the Board's discretion to hear petitions for review of preliminary orders. The APA does not provide discretion as to whether or not an agency will hear a petition for review.
6. Sections 740, 750, and 801. Revisions made for consistency with Section 67-5273, Idaho Code.

7. Section 790. Revisions made for consistency with Section 67-5270, Idaho Code.
8. Section 791. Revisions made for clarity and for consistency with Sections 39-107(6) and 67-5273, Idaho Code.
9. Section 860. Revisions made for clarity and for consistency with Section 39-107(6), Idaho Code.

Citizens of the state of Idaho and representatives of regulated industry having an interest in the procedures for obtaining Board review of an action of DEQ 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 the spring of 2010 for adoption as a pending rule. The pending rule is expected to be final and effective upon the adjournment of the 2011 legislative session if adopted by the Board and approved by the Legislature.

NEGOTIATED RULEMAKING: The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 58.01.23.810-815. On September 2, 2009, the “Notice of Intent to Promulgate - Negotiated Rulemaking” was published in the [Idaho Administrative Bulletin, Vol. 09-9, pages 336 and 337](#), and a preliminary draft rule was made available for public review. One meeting was held on September 23, 2009. Members of the public participated in this negotiated rulemaking process by attending the meeting.

IDAHO CODE SECTION 39-107D STATEMENT: This rule does regulate an activity not regulated by the federal government. The federal government does not regulate administrative procedures for the state of Idaho; therefore, the proposed rule revisions are not broader in scope or more stringent than federal law or regulations.

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

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

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 December 30, 2009.

DATED this 20th day of October, 2009.

THE FOLLOWING IS THE TEXT FOR DOCKET NO. 58-0123-0901

052. PETITIONS FOR DECLARATORY RULINGS TO BE DECIDED BY ORDER.

01. Final Agency Action. The Board's decision on a petition for declaratory ruling on the applicability of any statute, rule or order administered by the Department is a declaratory ruling and a final agency action within the meaning of Section 67-5255, Idaho Code. (3-15-02)

02. Content. The Board's order issuing the declaratory ruling shall contain or must be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-15-02)

a. This is a final agency action issuing a declaratory ruling. (3-15-02)

b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any person aggrieved by this declaratory ruling may appeal to district court by filing a petition for judicial review in the District Court in the county in which: (3-15-02)()

i. A hearing was held; (3-15-02)

ii. The declaratory ruling was issued; (3-15-02)

iii. The party appealing seeking review resides, or operates its principal place of business in Idaho; or (3-15-02)()

iv. The real property or personal property that was the subject of the declaratory ruling is located. (3-15-02)

c. ~~This appeal~~ The petition for judicial review must be filed within twenty-eight (28) days of the *service* date of the declaratory ruling. See Section 67-5273, Idaho Code. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

303. DEFECTIVE, INSUFFICIENT OR UNTIMELY PLEADINGS.

Defective, insufficient or untimely pleadings shall not be considered unless the presiding officer determines otherwise that good cause exists, but the presiding officer shall not consider a petition that is filed outside the time limit set forth in Section 100 unless all parties agree to the tolling of the time limit. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

3543. ~~ORDERS GRANTING INTERVENTION~~ — OBJECTIONS TO PETITIONS TO INTERVENE.

Any party opposing a petition to intervene, must file the objection within seven (7) days after receipt of the petition to intervene and serve the objection upon all parties of record and upon the person petitioning to intervene. Responses shall be filed within seven (7) days after service of the objection. ~~(3-20-04)~~()

3534. GRANTING PETITIONS TO INTERVENE.

01. General. If a petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding, does not unduly broaden the issues, and will not cause delay or prejudice to the parties, the presiding officer may grant intervention, subject to reasonable conditions. In addition, upon timely filing of a petition in accordance with Subsection 352.02, a permit applicant or permit holder may intervene as a matter of right in any contested case in which the permit is contested. ~~(3-15-02)~~()

02. Intervenor Response. Within fourteen (14) days of the service date of the order granting the petition to intervene, the intervenor shall file a response to the petition initiating the contested case. The response shall be in the form and content set out in Subsection 212.02. ()

355. REVIEW OF ORDERS GRANTING OR DENYING INTERVENTION.

Any party may petition the Board to review an order granting or denying intervention. Petitions for review shall be filed within fourteen (14) days *after of the service date* of the order. Responses shall be filed within fourteen (14) days after service of the petition for review. The Board may schedule oral argument in the matter before issuing a decision. ~~(3-20-04)~~()

(BREAK IN CONTINUITY OF SECTIONS)

720. RECOMMENDED ORDERS.

01. Definition. Recommended orders are orders issued by the presiding officer that will become a final order of the Board only after review by the Board pursuant to Section 67-5244, Idaho Code. (3-15-02)

02. Content. Every recommended order must include a schedule for review of the order by the Board and must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ~~(3-15-02)~~()

a. This is a recommended order of the presiding officer. It will not become final without action of the Board. (3-15-02)

~~**b.** Within twenty one (21) days after the service date of this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file~~

~~briefs in support of the party's position on any issue in the proceeding.~~ (3-15-02)

~~eb.~~ ~~Written briefs in support of or taking exceptions to the recommended order shall be filed with the hearing coordinator. Opposing parties shall have twenty-one (21) days to respond.~~ The Board shall allow all parties an opportunity to file briefs in support or taking exceptions to the recommended order and may schedule oral argument in the matter before issuing a final order. The hearing coordinator shall issue a notice setting out the briefing schedule and date and time for oral argument. The Board will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived or extended by the parties or for good cause shown. The Board may hold additional hearings or may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (3-15-02)()

03. No Motions for Reconsideration. Motions for reconsideration of any recommended order shall not be considered. (3-15-02)

721. -- 729. (RESERVED).

730. PRELIMINARY ORDERS.

01. Definition. Preliminary orders are orders issued by the presiding officer that will become a final order of the Board unless reviewed by the Board pursuant to Section 67-5245, Idaho Code. (3-15-02)

02. Content. Every preliminary order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-15-02)

a. This is a preliminary order of the presiding officer. It can and will become final without further action of the Board unless any party appeals to the Board by filing with the hearing coordinator a petition for review of the preliminary order; (3-15-02)()

b. Within fourteen (14) days ~~after~~ of the service date of this preliminary order, any party may ~~appeal to the Board~~ take exceptions to any part of this preliminary order by filing with the hearing coordinator a petition for review of the preliminary order ~~or exceptions to any part of the preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Board.~~ Otherwise, this preliminary order will become a final order of the Board. The basis for review must be stated in the petition. The Board may review the preliminary order on its own motion. (3-15-02)()

c. If any party ~~appeals or takes exceptions to this~~ files a petition for review of the preliminary order, ~~opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the hearing coordinator. The Board may review the preliminary order on its own motion.~~ (3-15-02)

~~d.~~ If the Board grants a petition to review the preliminary order, the Board shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. The hearing

coordinator shall issue a notice setting out the briefing schedule and date and time for oral argument. The Board will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived or extended by the parties or for good cause shown. The Board may hold additional hearings or may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (3-15-02)()

ed. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition for judicial review in the district court of the county in which: (3-15-02)()

- i. A hearing was held, (3-15-02)
- ii. The final agency action was taken, (3-15-02)
- iii. The party seeking review of the order resides, or operates its principal place of business in Idaho, or (3-15-02)
- iv. The real property or personal property that was the subject of the agency action is located. (3-15-02)

fe. ~~This appeal~~ The petition for judicial review must be filed within twenty-eight (28) days of this preliminary order becoming final. See Section 67-5273, Idaho Code. The filing of ~~an appeal to~~ a petition for judicial review in district court does not itself stay the effectiveness or enforcement of the order under ~~appeal review~~. (3-15-02)()

03. No Motions for Reconsideration. Motions for reconsideration of any preliminary order shall not be considered. (3-15-02)

731. -- 739. (RESERVED).

740. FINAL ORDERS.

01. Definition. Final orders are preliminary orders that have become final under Section 730 pursuant to Section 67-5245, Idaho Code, or orders issued by the Board pursuant to Section 67-5246, Idaho Code. An order shall be considered a final order pursuant to Section 67-5246, Idaho Code, if issued after a decision by the number of Board members necessary to constitute a quorum. Emergency orders issued under Section 67-5247, Idaho Code, shall be designated as final orders if the Board will not issue further orders or conduct further proceedings in the matter. (3-15-02)

02. Content. Every final order issued by the Board must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-15-02)

- a. This is a final order of the Board. (3-15-02)
- b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by

this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition for judicial review in the district court of the county in which: (3-15-02)()

- i. A hearing was held; (3-15-02)
- ii. The final agency action was taken; (3-15-02)
- iii. The party seeking review of the order resides, or operates its principal place of business in Idaho; or (3-15-02)
- iv. The real property or personal property that was the subject of the agency action is located. (3-15-02)

c. An appeal The petition for judicial review must be filed within twenty-eight (28) days of the *service* date of this final order. See Section 67-5273, Idaho Code. The filing of ~~an appeal to~~ a petition for judicial review in district court does not itself stay the effectiveness or enforcement of the order under appeal review. (3-15-02)()

03. No Motions for Reconsideration. Motions for reconsideration of any final order shall not be considered. (3-15-02)

741. -- 749. (RESERVED).

750. ORDER NOT DESIGNATED.

If an order is not designated as recommended, preliminary or final at its release issuance, but is designated as recommended, preliminary or final after its release issuance, its *effective* date for purposes of appeal judicial review is the *service* date of the order of designation. If a party believes that an order not designated as a recommended order, preliminary order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the party may move to designate the order as recommended, preliminary or final, as appropriate. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

790. ~~PERSONS WHO MAY APPEAL~~ RIGHT OF JUDICIAL REVIEW.

Pursuant to Section 67-5270, Idaho Code, any person aggrieved by a final order of the Board in a contested case ~~may appeal to district court~~ is entitled to judicial review. Pursuant to Section 67-5271, Idaho Code, a person is not entitled to judicial review of an agency action in district court until that person has exhausted all administrative remedies available with the Board, but a preliminary, procedural, or intermediate agency action or ruling is immediately reviewable in district court if administrative review of the final agency action would not provide an adequate remedy. (3-15-02)()

791. ~~NOTICE OF APPEAL~~ PETITION FOR JUDICIAL REVIEW.

~~The notice of appeal must be filed with the hearing coordinator as set out in Section 008 and with the district court and served on all parties.~~ (3-15-02)

01. Filing ~~Appeal~~ and Service. ~~The petition for judicial review must be filed with the hearing coordinator as set out in Section 008 and with the district court and served on all parties. Pursuant to Section 39-107(6), Idaho Code, the petition for judicial review shall also be served upon the Chairman of the Board, the Director of the Department, and upon the Attorney General of the State of Idaho.~~ Pursuant to Section 67-5272, Idaho Code, ~~appeals~~ petitions for judicial review may be filed in the District Court of the county in which: (3-15-02)()

- a. The hearing was held; (3-15-02)
- b. The final agency action was taken; (3-15-02)
- c. The party seeking review of the agency action resides; or (3-15-02)
- d. The real property or personal property that was the subject of the agency action is located. (3-15-02)

02. Filing Deadline. Pursuant to Section 67-5273, Idaho Code, a petition for judicial review of a final order in a contested case must be filed within twenty-eight (28) days of the service date of the final order. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

801. BOARD RESPONSE TO PETITION.

01. Action of Board. The Board shall have until the first regularly scheduled meeting that takes place fourteen (14) or more days after submission of the petition to initiate rulemaking proceedings in accordance with Sections 67-5220 through 67-5225, Idaho Code, and these rules or deny the petition in writing, stating its reasons for the denial. (3-15-02)

02. Denial. If the petition is denied, the written denial shall state: (3-15-02)

a. The Board has denied your petition to initiate rulemaking. This denial is a final agency action within the meaning of Section 67-5230, Idaho Code. (3-15-02)

b. Pursuant to Section 67-5270, Idaho Code, any person aggrieved by this final agency action may seek review of the denial to initiate rulemaking by filing a petition for judicial review in the District Court of the county in which: (3-15-02)()

i. The hearing was held; (3-15-02)

ii. This final agency action was taken; (3-15-02)

- iii. The party seeking review resides, or operates its principal place of business in Idaho; or (3-15-02)
- iv. The real property or personal property that was the subject of the denial of the petition for rulemaking is located. (3-15-02)
- c. ~~This appeal~~ The petition for judicial review must be filed within twenty-eight (28) days of the *service* date of this denial of the petition to initiate rulemaking. ~~(3-15-02)~~()

(BREAK IN CONTINUITY OF SECTIONS)

860. ~~PERSONS WHO MAY SEEK~~ PETITION FOR JUDICIAL REVIEW OF AN ADMINISTRATIVE RULE OF THE DEPARTMENT.

Pursuant to Section 67-5270, Idaho Code, any person aggrieved by an administrative rule of the Department (either temporary or final) may seek judicial review in district court. ~~(3-15-02)~~()

01. Filing and Service. The petition for judicial review must be filed with the hearing coordinator as set out in Section 008 and with the district court and served on all parties. Pursuant to Section 39-107(6), Idaho Code, the petition for judicial review shall also be served upon the Chairman of the Board, the Director of the Department, and upon the Attorney General of the State of Idaho. Pursuant to Section 67-5272, Idaho Code, petitions for review may be filed in the District Court of the county in which: ~~(3-15-02)~~()

- a. The hearing was held; (3-15-02)
- b. The final agency action was taken; (3-15-02)
- c. The party seeking review of the agency action resides, or operates its principal place of business in Idaho; or (3-15-02)
- d. The real property or personal property that was the subject of the agency action is located. (3-15-02)

02. Time. Pursuant to Section 67-5273, Idaho Code, a petition for judicial review of a final rule (except for a challenge to procedures used in promulgating the rule) may be filed at any time. (3-15-02)