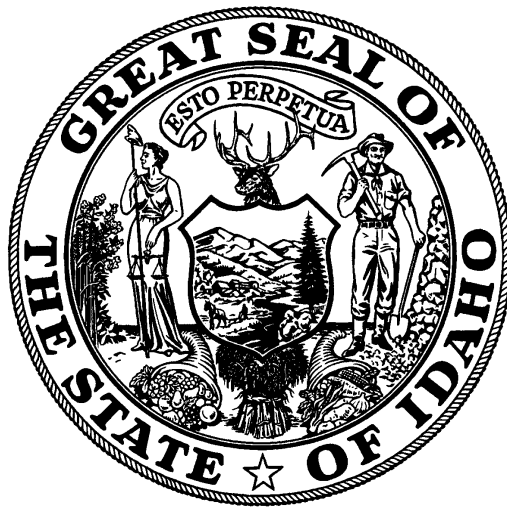


# **PENDING RULES COMMITTEE RULES REVIEW BOOK**

**Submitted for Review Before  
House Resources &  
Conservation Committee  
65th Idaho Legislature  
First Regular Session – 2019**



*Prepared by:*

*Office of the Administrative Rules Coordinator  
Department of Administration*

*January 2019*

**HOUSE RESOURCES & CONSERVATION COMMITTEE**

**ADMINISTRATIVE RULES REVIEW**

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## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.02 – RULES GOVERNING MANDATORY EDUCATION AND MENTORED HUNTING

DOCKET NO. 13-0102-1801

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 36-401 and 36-1508, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 64–66](#).

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

There is no fiscal impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Sharon W. Kiefer, (208) 334-3771.

Dated this 26th day of November, 2018.

Sharon W. Kiefer, Deputy Director  
Idaho Department of Fish and Game  
600 S. Walnut Street  
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Phone: (208) 334-3771  
Fax: (208) 334-4885

**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 36-401 and 36-1508, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 18, 2018.

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:

It is being proposed that IDAPA 13.01.02.101 be changed to allow a youth who is age eight (8) but younger than age ten (10) to possess consecutive annual Hunting Passports until reaching age ten (10) and to make a technical correction to statutory authorization for the rulemaking.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no effect to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature.

**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: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon W. Kiefer, (208) 334-3771.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 25, 2018.

DATED this 24th day of May, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0102-1801

**000. LEGAL AUTHORITY.**

The Idaho Fish and Game Commission is authorized under Sections 36-103, 36-104(b) and 36-412, Idaho Code, to adopt rules concerning education programs in hunting, trapping, and archery. The Idaho Fish and Game Commission is authorized to adopt rules concerning a mentored hunting program under Idaho Code Sections 36-401(a)8 and 36-1508(b). ~~(3-24-17)~~(\_\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**101. MENTORED HUNTING PROGRAM.**

Nothing in this section shall be construed as altering the requirements of Section 36-411, Idaho Code, to obtain a valid hunting license, or any other statutory or rule requirements for the take of wildlife. (4-4-13)

**01. Hunting Passport.** A Hunting Passport is a special authorization for any person to take wildlife when they are accompanied by a mentor and participating in the Mentored Hunting Program. (4-4-13)

**a.** Any person must obtain a Hunting Passport from the Department or a licensed vendor to participate as a mentee in the Mentored Hunting Program. (4-4-13)

**b.** Hunter education certification is not required for any person to possess a hunting passport. (4-4-13)

**c.** A Hunting Passport shall expire December 31 of the year for which it is valid. (4-4-13)

**d.** Any person who has possessed a Hunting Passport may not apply for a Hunting Passport in any subsequent year, except for any person who is eight (8) years of age who has possessed a Hunting Passport, may possess an additional Hunting Passport ~~at nine~~ each year until reaching ten (10) years of age. ~~(3-25-16)~~(\_\_\_\_\_)

**02. Eligibility of Mentee.** (4-4-13)

**a.** Any person who has not previously possessed a hunting license or equivalent license in any other state may possess a Hunting Passport to participate in the Mentored Hunting Program as a mentee. (4-4-13)

**b.** Any mentee possessing a Hunting Passport is eligible to possess general big game, turkey, and sandhill crane tags if the mentee is qualified to participate in the hunt. (4-4-13)

**c.** Any mentee possessing a Hunting Passport is not eligible to possess a control hunt tag but may be designated for a Landowner controlled hunt tag if the mentee is qualified to participate in the hunt. (4-4-13)

**d.** Any mentee with a Hunting Passport shall be ten (10) years of age to hunt big game. (4-11-15)

**e.** Any mentee with a Hunting Passport must be accompanied by a mentor as provided in Subsection 101.03.a. (4-4-13)

**f.** Any person shall be eight (8) years or older to possess a Hunting Passport. (4-4-13)

**g.** Any mentee must possess on his person a hunting passport while hunting and produce the same for inspection upon request of a conservation officer or any other person authorized to enforce fish and game laws. (4-4-13)

**03. Eligibility of Mentor.** (4-4-13)

**a.** Any person who possesses a valid Idaho hunting license and who is eighteen (18) years or older may participate in the Mentored Hunting Program as a mentor. (4-4-13)

**b.** A mentor may not accompany more than two (2) mentees at one (1) time that are participating in the Mentored Hunting Program. (4-4-13)

**c.** A mentor may hunt while participating in the Mentored Hunting Program if the mentor is qualified to participate in the hunt. (4-4-13)

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

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

DOCKET NO. 13-0108-1802

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 and 36-405, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018 Idaho Administrative Bulletin, [Vol. 18-10, pages 111–117](#).

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

There is no fiscal impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Sharon W. Kiefer, (208) 334-3771.

Dated this 26th day of November, 2018.

Sharon W. Kiefer, Deputy Director  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-3771  
Fax: (208) 334-4885



**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 and 36-405, 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 17, 2018.

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:

It is being proposed that IDAPA 13.01.08.260 be changed to exclude any moose, bighorn sheep, mountain goat, or grizzly bear controlled hunt tag drawn by a parent or grandparent from designation to their child or grandchild.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no effect to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was initiated. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, **Vol. 18-6, page 46**. However, the polarity of comments within the scope of rulemaking demonstrated that further negotiation would not lead to consensus and the Fish and Game Commission declared negotiated rulemaking 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: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon W. Kiefer, (208) 334-3771.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018.

Dated this 27th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-1802**

**260. TAGS FOR CONTROLLED HUNTS.**

**01. Use of Controlled Hunt Tags.** No person may hunt in any controlled hunt without having a valid controlled hunt tag in possession. (4-7-11)

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

**b.** In the event a tag is issued based on erroneous information, the tag will be invalidated by the Department and may NOT be used. The Department will notify the hunter of the invalidation of the 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. (4-7-11)

**c.** Any person who draws a controlled hunt tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**d.** Any person who draws a controlled hunt tag for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**e.** Any person who draws a controlled hunt tag for pronghorn is prohibited from hunting in any other pronghorn hunt; EXCEPT: (4-7-11)

**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. (4-7-11)

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. (4-7-11)

iii. The holder of a pronghorn controlled hunt tag may purchase a controlled hunt extra tag for pronghorn. (4-7-11)

iv. Any person who draws a pronghorn controlled hunt extra tag may apply for a controlled hunt tag for pronghorn. (4-7-11)

f. Any person who draws a spring controlled hunt tag for black bear, 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. (4-7-11)

g. Any person who draws a fall controlled hunt tag 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. (4-7-11)

h. Any resident adult person who possesses any controlled hunt tag EXCEPT a moose, bighorn sheep, mountain goat, or grizzly bear tag, may designate the controlled hunt tag to his or her resident minor child or grandchild who is qualified to participate in the hunt. ~~(3-20-14)~~( )

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates a control hunt tag to his or her resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild. ~~except that 260.03.d., 03.f., 03.g. and 03.h. apply to the designated child or grandchild.~~ Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. ~~(3-25-16)~~( )

ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

iii. Any resident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

i. Any nonresident adult person who possesses any controlled hunt tag EXCEPT a moose, bighorn sheep, mountain goat, or grizzly bear tag, may designate the controlled hunt tag to his or her nonresident minor child or grandchild who is qualified to participate in the hunt. ~~(3-20-14)~~( )

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any nonresident adult person who possesses and designates his or her control hunt tag to his or her nonresident minor child or grandchild. Rules for eligibility in Section 260 apply to any nonresident adult person who possesses and designates a control hunt tag and to the designated nonresident minor child or grandchild ~~except that 260.03.d., 03.f., 03.g., and 03.h. apply to the designated child or grandchild.~~ Mandatory school as provided in Section 270 shall apply to the designated nonresident minor child or grandchild. ~~(3-25-16)~~( )

ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and

may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

iii. Any nonresident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

**02. Nonresident Tag Limitations.** (4-7-11)

a. In controlled hunts with ten (10) or fewer tags, not more than one (1) nonresident tag will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) tags, not more than ten percent (10%) of the 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. (4-7-11)

b. In unlimited controlled hunts, the Commission may limit the number of tags available for nonresident hunters to no less than ten percent (10%) of the average number of tags drawn annually during the previous five (5) year period. (3-28-18)

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

d. For each species, the total number of outfitter allocated controlled hunt tags shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt 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 tags that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (4-7-11)

e. Governor's Wildlife Partnership Tags for deer, elk, pronghorn, bighorn sheep, mountain goat, and moose shall be taken from the nonresident tag quota and availability is subject to Nonresident Tag Limitations. (4-4-13)

**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 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 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 tags, Landowner Appreciation Program tags, or Governor's Wildlife Partnership Tags. (2-21-18)

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 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 pronghorn controlled hunt permit sales. (4-7-11)

**d.** Any person who has killed a California bighorn ram or a Rocky Mountain bighorn ram on any controlled hunt may not apply for a 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 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 tag for any hunt south of Interstate Highway 84. Bighorn sheep auction tag recipients under IDAPA 13.01.04.700 and lottery tag recipients under IDAPA 13.01.04.800 are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-4-13)

**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 tag for five (5) years. The harvest of a bighorn ewe does not make the hunter ineligible to apply for a 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. (4-7-11)

**g.** Any person who has killed a mountain goat since 1977 may not apply for a mountain goat tag. (4-7-11)

**h.** Any person who has killed an antlered moose in Idaho may not apply for a moose tag for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a tag for antlerless moose EXCEPT that any person may apply for tags remaining unfilled after the controlled hunt draw. (4-7-11)

**i.** Any person who has killed a grizzly bear in Idaho may not apply for a grizzly bear tag. (3-29-17)

**j.** 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)

**k.** Any person may apply for both a controlled hunt tag and a controlled hunt extra tag. (4-7-11)

**l.** 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)

**m.** 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)

**n.** The Commission establishes youth only controlled hunts by proclamation. Only hunters ten (10) 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 or a nonresident disabled American Veteran hunting license may apply for first-come, first-served leftover youth only controlled hunt permits. (3-25-16)

**04. Applications.** Individual applications or group applications for controlled hunts 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; EXCEPT: applicants who would like to change their submitted controlled hunt application may request the original application be canceled to resubmit a new controlled hunt application during the

applicable application period. The new application is subject to the appropriate application fees. (4-7-11)

- a. Spring black bear, spring grizzly bear -- Application period - January 15 - February 15. (3-29-17)
- b. Moose, bighorn sheep, and mountain goat -- Application period for first drawing - April 1 - 30. (4-6-05)
- c. Deer, elk, pronghorn, fall black bear, fall grizzly bear, and gray wolves -- Application period for first drawing -- May 1-June 5. (3-29-17)
- d. Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15-25. (4-6-05)
- e. Deer, elk, pronghorn, fall black bear, fall grizzly bear, and gray wolves -- Application period for second drawing -- August 5-15. (3-29-17)

**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 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. (4-7-11)
- b. Only one (1) controlled hunt extra tag will be issued for each person on any application submitted. (4-7-11)
- 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 tag hunts or controlled hunt extra tag hunts. (4-7-11)
- 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, pronghorn, moose, bighorn sheep, mountain goat, black bear, 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, pronghorn, black bear, 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 tag in the mail. (4-7-11)
- e. Any controlled hunt tags, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold 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 application and tag will be issued to successful 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. (4-7-11)
  - i. Spring Turkey and Spring Bear - April 1. (4-7-11)
  - ii. Moose, Bighorn Sheep and Mountain Goat - July 10. (4-7-11)
  - iii. Deer, Elk, Pronghorn and Fall Bear - August 25. (4-7-11)
- f. A "group application" for deer, elk, and 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. (4-7-11)

**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 tags available in a hunt that group application will not be selected for that hunt. (4-7-11)

**i.** Landowner permission hunt 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. (4-7-11)

**j.** Deer and elk unlimited controlled hunts as identified by the Fish and Game Commission's Big Game Season Proclamation as “first-choice only” may be applied for only as a first choice controlled hunt during the controlled hunt application process. The Proclamation is published in a brochure available at department offices and license vendors. (4-11-15)

**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. (4-7-11)

**f.** Fees for resident and nonresident adult control hunt tags that are subsequently designated to a minor child or grandchild are not refundable. (4-4-13)

**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 Tags.** Successful applicants for the first deer, elk, black bear, gray wolf, or pronghorn controlled hunt drawing must purchase and pick up their controlled hunt tag by August 1. All controlled hunt tags not purchased and picked up will be entered into a second controlled hunt drawing. Any controlled hunt tags left over or unclaimed after the second controlled hunt drawing will be sold on a first-come, first-served basis. (4-7-11)

**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)

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

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

DOCKET NO. 13-0108-1803

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 and 36-1101, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018 Idaho Administrative Bulletin, [Vol. 18-10, pages 118–124](#).

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

There is no fiscal impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Sharon W. Kiefer, (208) 334-3771.

Dated this 26th day of November, 2018.

Sharon W. Kiefer, Deputy Director  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-3771  
Fax: (208) 334-4885



**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 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 17, 2018.

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:

It is being proposed that IDAPA 13.01.08.260 be changed to allow hunters 65 years of age or older or hunters with a senior combination hunting license or a disabled combination license or a nonresident disabled American Veteran hunting license to be eligible to participate in any second application period for youth only controlled hunts.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no effect to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was initiated. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 47](#). However, the polarity of comments within the scope of rulemaking demonstrated that further negotiation would not lead to consensus and the Fish and Game Commission declared negotiated rulemaking 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: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon W. Kiefer, (208) 334-3771.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018.

Dated this 27th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-1803**

**260. TAGS FOR CONTROLLED HUNTS.**

**01. Use of Controlled Hunt Tags.** No person may hunt in any controlled hunt without having a valid controlled hunt tag in possession. (4-7-11)

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

**b.** In the event a tag is issued based on erroneous information, the tag will be invalidated by the Department and may NOT be used. The Department will notify the hunter of the invalidation of the 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. (4-7-11)

**c.** Any person who draws a controlled hunt tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**d.** Any person who draws a controlled hunt tag for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**e.** Any person who draws a controlled hunt tag for pronghorn is prohibited from hunting in any other pronghorn hunt; EXCEPT: (4-7-11)

**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. (4-7-11)

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. (4-7-11)

iii. The holder of a pronghorn controlled hunt tag may purchase a controlled hunt extra tag for pronghorn. (4-7-11)

iv. Any person who draws a pronghorn controlled hunt extra tag may apply for a controlled hunt tag for pronghorn. (4-7-11)

f. Any person who draws a spring controlled hunt tag for black bear, 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. (4-7-11)

g. Any person who draws a fall controlled hunt tag 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. (4-7-11)

h. Any resident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to his or her resident minor child or grandchild who is qualified to participate in the hunt. (3-20-14)

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates a control hunt tag to his or her resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild, except that 260.03.d., 03.f., 03.g. and 03.h. apply to the designated child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. (3-25-16)

ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

iii. Any resident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

i. Any nonresident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to his or her nonresident minor child or grandchild who is qualified to participate in the hunt. (3-20-14)

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any nonresident adult person who possesses and designates his or her control hunt tag to his or her nonresident minor child or grandchild. Rules for eligibility in Section 260 apply to any nonresident adult person who possesses and designates a control hunt tag and to the designated nonresident minor child or grandchild except that 260.03.d., 03.f., 03.g., and 03.h. apply to the designated child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated nonresident minor child or grandchild. (3-25-16)

ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

iii. Any nonresident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

**02. Nonresident Tag Limitations.** (4-7-11)

a. In controlled hunts with ten (10) or fewer tags, not more than one (1) nonresident tag will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) tags, not more than ten percent (10%) of the 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. (4-7-11)

b. In unlimited controlled hunts, the Commission may limit the number of tags available for nonresident hunters to no less than ten percent (10%) of the average number of tags drawn annually during the previous five (5) year period. (3-28-18)

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

d. For each species, the total number of outfitter allocated controlled hunt tags shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt 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 tags that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (4-7-11)

e. Governor's Wildlife Partnership Tags for deer, elk, pronghorn, bighorn sheep, mountain goat, and moose shall be taken from the nonresident tag quota and availability is subject to Nonresident Tag Limitations. (4-4-13)

**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 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 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 tags, Landowner Appreciation Program tags, or Governor's Wildlife Partnership Tags. (2-21-18)

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 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 pronghorn controlled hunt permit sales. (4-7-11)

**d.** Any person who has killed a California bighorn ram or a Rocky Mountain bighorn ram on any controlled hunt may not apply for a 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 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 tag for any hunt south of Interstate Highway 84. Bighorn sheep auction tag recipients under IDAPA 13.01.04.700 and lottery tag recipients under IDAPA 13.01.04.800 are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-4-13)

**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 tag for five (5) years. The harvest of a bighorn ewe does not make the hunter ineligible to apply for a 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. (4-7-11)

**g.** Any person who has killed a mountain goat since 1977 may not apply for a mountain goat tag. (4-7-11)

**h.** Any person who has killed an antlered moose in Idaho may not apply for a moose tag for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a tag for antlerless moose EXCEPT that any person may apply for tags remaining unfilled after the controlled hunt draw. (4-7-11)

**i.** Any person who has killed a grizzly bear in Idaho may not apply for a grizzly bear tag. (3-29-17)

**j.** 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)

**k.** Any person may apply for both a controlled hunt tag and a controlled hunt extra tag. (4-7-11)

**l.** 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)

**m.** 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)

**n.** The Commission establishes youth only controlled hunts by proclamation. Only hunters ten (10) 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 or a nonresident disabled American Veteran hunting license may apply during a second application period for youth-only controlled hunts or for first-come, first-served leftover youth only controlled hunt permits tags. (3-25-16)( )

**04. Applications.** Individual applications or group applications for controlled hunts 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; EXCEPT: applicants who would like to change their submitted controlled hunt application may request the original application be canceled to resubmit a new controlled hunt application during the applicable application period. The new application is subject to the appropriate application fees. (4-7-11)

- a. Spring black bear, spring grizzly bear -- Application period - January 15 - February 15. (3-29-17)
  - b. Moose, bighorn sheep, and mountain goat -- Application period for first drawing - April 1 - 30. (4-6-05)
  - c. Deer, elk, pronghorn, fall black bear, fall grizzly bear, and gray wolves -- Application period for first drawing -- May 1-June 5. (3-29-17)
  - d. Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15-25. (4-6-05)
  - e. Deer, elk, pronghorn, fall black bear, fall grizzly bear, and gray wolves -- Application period for second drawing -- August 5-15. (3-29-17)
- 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 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. (4-7-11)
  - b. Only one (1) controlled hunt extra tag will be issued for each person on any application submitted. (4-7-11)
  - 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 tag hunts or controlled hunt extra tag hunts. (4-7-11)
  - 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, pronghorn, moose, bighorn sheep, mountain goat, black bear, 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, pronghorn, black bear, 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 tag in the mail. (4-7-11)
  - e. Any controlled hunt tags, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold 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 application and tag will be issued to successful 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. (4-7-11)
    - i. Spring Turkey and Spring Bear - April 1. (4-7-11)
    - ii. Moose, Bighorn Sheep and Mountain Goat - July 10. (4-7-11)
    - iii. Deer, Elk, Pronghorn and Fall Bear - August 25. (4-7-11)
  - f. A "group application" for deer, elk, and 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. (4-7-11)

**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 tags available in a hunt that group application will not be selected for that hunt. (4-7-11)

**i.** Landowner permission hunt 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. (4-7-11)

**j.** Deer and elk unlimited controlled hunts as identified by the Fish and Game Commission's Big Game Season Proclamation as “first-choice only” may be applied for only as a first choice controlled hunt during the controlled hunt application process. The Proclamation is published in a brochure available at department offices and license vendors. (4-11-15)

**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. (4-7-11)

**f.** Fees for resident and nonresident adult control hunt tags that are subsequently designated to a minor child or grandchild are not refundable. (4-4-13)

**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 Tags.** Successful applicants for the first deer, elk, black bear, gray wolf, or pronghorn controlled hunt drawing must purchase and pick up their controlled hunt tag by August 1. All controlled hunt tags not purchased and picked up will be entered into a second controlled hunt drawing. Any controlled hunt tags left over or unclaimed after the second controlled hunt drawing will be sold on a first-come, first-served basis. (4-7-11)

**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)

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

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

DOCKET NO. 13-0108-1804

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 and 36-1101, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018 Idaho Administrative Bulletin, [Vol. 18-10, pages 125–128](#).

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

There is no fiscal impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Greg Wooten, (208) 334-3736.

Dated this 26th day of November, 2018.

Greg Wooten, Chief  
Bureau of Enforcement  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-3736  
Fax: (208) 334-2114



**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 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 17, 2018.

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:

It is being proposed that IDAPA 13.01.08.410 be changed to allow certain caliber airguns using pre-charged pneumatic power as a method of take for big game, including in short-range weapon seasons.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no effect to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was initiated. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 48](#). However, the comments within the scope of rulemaking demonstrated that further negotiation would not lead to consensus and the Fish and Game Commission declared negotiated rulemaking 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: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Greg Wooten, (208) 334-3736.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018.

Dated this 27th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-1804**

**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 and trapped gray wolf. (4-4-13)

**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, Airguns, 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)
- o.** With any airgun using pre-charged pneumatic power to propel a projectile (excluding shot and arrows) with unignited compressed air or gas and projectiles less than thirty-five (0.35) caliber for deer, pronghorn antelope, mountain lion, or gray wolf, or less than forty-five (0.45) caliber for elk, moose, bighorn sheep, mountain goat, or black or grizzly bear. ( )
- 03. Muzzleloaders.** (7-1-93)
- a.** With a muzzleloading rifle or musket which is less than forty-five (.45) caliber for deer, pronghorn, mountain lion, or gray wolf, or which is less than fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. (4-7-11)
- 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, pronghorn, mountain lion, or gray wolf, or at least fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat or black bear. (4-7-11)
- 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 a~~Any shotgun using any slug or double-aught (#00) or larger buckshot. (~~7-1-99~~)( )
- b. ~~With a~~Any muzzleloader that is at least forty-five (0.45) caliber for deer, pronghorn, mountain lion, or gray wolf, or at least fifty (0.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. (~~4-7-11~~)( )
- c. ~~With a~~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 a~~Any handgun using straight wall centerfire cartridges not originally developed for rifles. (~~3-29-10~~)( )
- e. Any airgun using pre-charged pneumatic power to propel a projectile (excluding shot and arrows) with unignited compressed air or gas and projectiles at least thirty-five (0.35) caliber for deer and pronghorn antelope or at least forty-five (0.45) caliber for elk and moose. ( )

**05. Other.** (7-1-93)

- a. With electronic calls EXCEPT for the hunting of mountain lions, black bears, and wolves in seasons set by Idaho Fish and Game Commission proclamation. (4-7-11)
- 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 and gray wolf trapping. See Rules of the Idaho Fish and Game Commission, IDAPA 13.01.17, "Rules Governing the Use of Bait and Trapping for Taking Big Game Animals". (4-4-13)
- 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 13.01.17, "Rules Governing the Use of Bait and Trapping for Taking Big Game Animals." (4-4-13)
- 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. (4-7-11)

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

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

DOCKET NO. 13-0108-1805

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 36-104, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018 Idaho Administrative Bulletin, [Vol. 18-10, pages 129–135](#).

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

There is no fiscal impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Sharon W. Kiefer, (208) 334-3771.

Dated this 26th day of November, 2018.

Sharon W. Kiefer, Deputy Director  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-3771  
Fax: (208) 334-4885

**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is December 1, 2018.

**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, 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 17, 2018.

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:

It is being proposed that IDAPA 13.01.08.260 be changed to not allow mail as a method to submit regular controlled hunt applications.

**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:

Temporary rulemaking confers a benefit because it allows the Department to provide timely and proactive outreach to hunters applying for regular controlled hunts in 2019.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: The temporary and proposed rule change has no associated fee.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There is no negative fiscal impact to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department was unable to determine persons who would use mail in 2019 to submit a controlled hunt application so there was a lack of identifiable representatives of affected interests.

**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: This temporary and proposed rules does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon W. Kiefer, (208) 334-3771.

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 24, 2018.

Dated this 30th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-1805**

**260. TAGS FOR CONTROLLED HUNTS.**

**01. Use of Controlled Hunt Tags.** No person may hunt in any controlled hunt without having a valid controlled hunt tag in possession. (4-7-11)

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

**b.** In the event a tag is issued based on erroneous information, the tag will be invalidated by the Department and may NOT be used. The Department will notify the hunter of the invalidation of the 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. (4-7-11)

**c.** Any person who draws a controlled hunt tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**d.** Any person who draws a controlled hunt tag for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**e.** Any person who draws a controlled hunt tag for pronghorn is prohibited from hunting in any other pronghorn hunt; EXCEPT: (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**iii.** The holder of a pronghorn controlled hunt tag may purchase a controlled hunt extra tag for pronghorn. (4-7-11)

**iv.** Any person who draws a pronghorn controlled hunt extra tag may apply for a controlled hunt tag for pronghorn. (4-7-11)

**f.** Any person who draws a spring controlled hunt tag for black bear, 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. (4-7-11)

**g.** Any person who draws a fall controlled hunt tag 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. (4-7-11)

**h.** Any resident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to his or her resident minor child or grandchild who is qualified to participate in the hunt. (3-20-14)

**i.** Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates a control hunt tag to his or her resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild, except that 260.03.d., 03.f., 03.g. and 03.h. apply to the designated child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. (3-25-16)

**ii.** Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

**iii.** Any resident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

**iv.** Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

**i.** Any nonresident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to his or her nonresident minor child or grandchild who is qualified to participate in the hunt. (3-20-14)

**i.** Rules for use of controlled hunt tags in Sections 260 and 261 apply to any nonresident adult person who possesses and designates his or her control hunt tag to his or her nonresident minor child or grandchild. Rules for eligibility in Section 260 apply to any nonresident adult person who possesses and designates a control hunt tag and to the designated nonresident minor child or grandchild except that 260.03.d., 03.f., 03.g., and 03.h. apply to the designated child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated nonresident minor child or grandchild. (3-25-16)



ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

iii. Any nonresident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

**02. Nonresident Tag Limitations.** (4-7-11)

**a.** In controlled hunts with ten (10) or fewer tags, not more than one (1) nonresident tag will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) tags, not more than ten percent (10%) of the 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. (4-7-11)

**b.** In unlimited controlled hunts, the Commission may limit the number of tags available for nonresident hunters to no less than ten percent (10%) of the average number of tags drawn annually during the previous five (5) year period. (3-28-18)

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

**d.** For each species, the total number of outfitter allocated controlled hunt tags shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt 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 tags that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (4-7-11)

**e.** Governor's Wildlife Partnership Tags for deer, elk, pronghorn, bighorn sheep, mountain goat, and moose shall be taken from the nonresident tag quota and availability is subject to Nonresident Tag Limitations. (4-4-13)

**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 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 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 tags, Landowner Appreciation Program tags, or Governor's Wildlife Partnership Tags. (2-21-18)

**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 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 pronghorn controlled hunt permit sales. (4-7-11)

**d.** Any person who has killed a California bighorn ram or a Rocky Mountain bighorn ram on any controlled hunt may not apply for a 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 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 tag for any hunt south of Interstate Highway 84. Bighorn sheep auction tag recipients under IDAPA 13.01.04.700 and lottery tag recipients under IDAPA 13.01.04.800 are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-4-13)

**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 tag for five (5) years. The harvest of a bighorn ewe does not make the hunter ineligible to apply for a 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. (4-7-11)

**g.** Any person who has killed a mountain goat since 1977 may not apply for a mountain goat tag. (4-7-11)

**h.** Any person who has killed an antlered moose in Idaho may not apply for a moose tag for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a tag for antlerless moose EXCEPT that any person may apply for tags remaining unfilled after the controlled hunt draw. (4-7-11)

**i.** Any person who has killed a grizzly bear in Idaho may not apply for a grizzly bear tag. (3-29-17)

**j.** 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)

**k.** Any person may apply for both a controlled hunt tag and a controlled hunt extra tag. (4-7-11)

**l.** 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)

**m.** 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)

**n.** The Commission establishes youth only controlled hunts by proclamation. Only hunters ten (10) 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 or a nonresident disabled American Veteran hunting license may apply for first-come, first-served leftover youth only controlled hunt permits. (3-25-16)

**04. Applications.** Individual applications or group applications for controlled hunts may be submitted electronically through the automated licensing system at any vendor location, including Idaho Department of Fish and Game regional offices or the headquarters office, through the Internet, or 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; EXCEPT: applicants who would like to change their submitted controlled hunt application may request the original application be canceled to resubmit a new controlled hunt application during the applicable application period. The new application is subject to the appropriate application fees. (4-7-11)( )

- a. Spring black bear, spring grizzly bear -- Application period - January 15 - February 15. (3-29-17)
- b. Moose, bighorn sheep, and mountain goat -- Application period for first drawing - April 1 - 30. (4-6-05)
- c. Deer, elk, pronghorn, fall black bear, fall grizzly bear, and gray wolves -- Application period for first drawing -- May 1-June 5. (3-29-17)
- d. Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15-25. (4-6-05)
- e. Deer, elk, pronghorn, fall black bear, fall grizzly bear, and gray wolves -- Application period for second drawing -- August 5-15. (3-29-17)

**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 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. (4-7-11)
- b. Only one (1) controlled hunt extra tag will be issued for each person on any application submitted. (4-7-11)
- 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 tag hunts or controlled hunt extra tag hunts. (4-7-11)( )
- 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, pronghorn, moose, bighorn sheep, mountain goat, black bear, 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, pronghorn, black bear, 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 tag in the mail. (4-7-11)( )
- e. Any controlled hunt tags, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold 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 application and tag will be issued to successful 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. (4-7-11)
  - i. Spring Turkey and Spring Bear - April 1. (4-7-11)
  - ii. Moose, Bighorn Sheep and Mountain Goat - July 10. (4-7-11)
  - iii. Deer, Elk, Pronghorn and Fall Bear - August 25. (4-7-11)

**f.** A “group application” for deer, elk, and 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. (4-7-11)

**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 tags available in a hunt that group application will not be selected for that hunt. (4-7-11)

**i.** Landowner permission hunt 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. (4-7-11)

**j.** Deer and elk unlimited controlled hunts as identified by the Fish and Game Commission's Big Game Season Proclamation as “first-choice only” may be applied for only as a first choice controlled hunt during the controlled hunt application process. The Proclamation is published in a brochure available at department offices and license vendors. (4-11-15)

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.09 – RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1803

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 and 36-1101, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 67-70](#).

**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:

There is no fiscal impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Sharon W. Kiefer, (208) 334-3771.

Dated this 26th day of November, 2018.

Sharon W. Kiefer, Deputy Director  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25, Boise, ID 83707  
Phone: (208) 334-3771  
Fax: (208) 334-4885

**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is May 10, 2018.

**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 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 July 18, 2018.

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:

This rule clarifies use of turkey tags in conjunction with a turkey controlled hunt permit including validation, and revises the controlled hunt application period to be consistent with the turkey season proclamation.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule confers a benefit to hunters for the upcoming 2018 fall turkey season by clarifying use of turkey tags in conjunction with a turkey controlled hunt permit. Fall controlled hunts begin September 15, 2018.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This rule change has no associated fee.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There will not be a negative fiscal impact greater than \$10,000 as a result of this change in rule.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature.

**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: This rule does not include incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon W. Kiefer, (208) 334-3771.

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 July 25, 2018.

DATED this 29th day of May, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0109-1803

**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, Wilson's 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. (3-29-12)

**a.** Tag validation and attachment: Immediately after any sandhill crane is killed, the sandhill crane tag must be validated and securely attached to the sandhill crane. (4-4-13)

**b.** 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. (4-4-13)

**c.** The tag must remain attached so long as the sandhill crane is in transit or storage. (4-4-13)

**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) types of 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: one (1) general and two (2) extra. In addition to the previously mentioned three (3) turkey tags, three (3) special unit tags may also be purchased. A hunter may use the general tag to hunt in any spring general season or use the general tag with a controlled hunt permit to hunt in a controlled hunt.~~ A hunter may purchase one (1) general tag, two (2) extra tags, and three (3) special unit tags. The general tag and one (1) extra tag may be used during the spring general season; however, if one (1) or both go unused, the unused tag(s) may be used during the general fall season. A second extra tag may also be used during the general fall season. A general tag or an extra tag may be used with a controlled hunt permit in the spring and fall seasons. Special unit tags may be used in designated units during any season set by the Commission. (3-29-12)( )

**b.** Permits for Controlled Hunts: Any person who receives a controlled hunt permit for wild turkey is prohibited from using that permit to hunt in any other wild turkey controlled hunt. (3-29-12)

**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~~ March 1 for spring hunts and ~~July 15~~ June 5 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 (\$) 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 and permit validation and attachment: Immediately after any wild turkey is killed, the turkey tag and permit, if a controlled hunt, must be validated and securely attached to the wild turkey. (~~7-1-93~~)(    )

h. To validate the tag and permit, the hunter must cut out and completely remove two (2) triangles on the border of the tag and permit, one (1) for the month and one (1) for the day of the kill. (~~7-1-93~~)(    )

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

j. The Commission establishes youth-only general and controlled hunts by proclamation. Youth-only general hunts are limited to participation by hunters who are ten (10) to seventeen (17) years of age with a valid license. Only hunters nine (9) to seventeen (17) years of age with a valid license may apply for youth-only controlled hunts, provided they are ten (10) to seventeen (17) 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. (3-29-17)

k. Any resident adult person who possesses a controlled hunt permit may designate the controlled hunt permit to his or her resident minor child or grandchild who is qualified to participate in the hunt. The designated child or grandchild shall possess the appropriate tag for the hunt. (3-20-14)

i. Designation of the controlled hunt permit shall be made on a form prescribed by the Department



and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

ii. Any resident child or grandchild cannot be designated more than one (1) control hunt permit per calendar year. (4-4-13)

iii. Designation of a controlled hunt permit shall be completed before the first opening hunt date for the permit. (4-4-13)

**I.** Any nonresident adult person who possesses a controlled hunt permit may designate the controlled hunt permit to his or her nonresident minor child or grandchild who is qualified to participate in the hunt. The designated child or grandchild shall possess the appropriate tag for the hunt. (3-20-14)

i. Designation of the controlled hunt ~~tag~~ permit shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (~~4-4-13~~)(    )

ii. Any nonresident child or grandchild cannot be designated more than one (1) control hunt permit per calendar year. (3-29-17)

iii. Designation of a controlled hunt permit shall be completed before the first opening hunt date for the permit. (4-4-13)

**04. Early September Canada Goose Hunts.** Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-29-12)

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.09 – RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1805

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 36-104, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018 Idaho Administrative Bulletin, [Vol. 18-10, pages 137-140](#).

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

There is no fiscal impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jeff Knetter, (208) 334-2920.

Dated this 26th day of November, 2018.

Jeff Knetter  
Upland Game/Migratory Bird Coordinator  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-2920  
Fax: (208) 334-2114

**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 36-104, 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 17, 2018.

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:

It is being proposed that IDAPA 13.01.09.100 be changed create the administrative framework for the Fish and Game Commission to adopt Landowner Permission Hunt (LPH) seasons for turkeys in areas of the state to manage turkey depredation on private lands and to provide landowners with turkey hunting opportunities where turkey hunting is controlled.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no effect to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the agency does not have contacts for landowners who are interested in turkey LPH so there is a lack of identifiable representatives of affected interests to participate in negotiated rulemaking.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jeff Knetter, (208) 334-2920.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018.

Dated this 30th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0109-1805**

**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, Wilson's 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. (3-29-12)

**a.** Tag validation and attachment: Immediately after any sandhill crane is killed, the sandhill crane tag must be validated and securely attached to the sandhill crane. (4-4-13)

**b.** 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. (4-4-13)

**c.** The tag must remain attached so long as the sandhill crane is in transit or storage. (4-4-13)

**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; one (1) general and two (2) extra. In addition to the previously mentioned three (3) turkey tags, three (3) special unit tags may also be purchased. A hunter may use the general tag to hunt in any spring general season or use the general tag with a controlled hunt permit to hunt in a controlled hunt. (3-29-12)

**b.** Permits for Controlled Hunts: Any person who receives a controlled hunt permit for wild turkey is prohibited from using that permit to hunt in any other wild turkey controlled hunt. (3-29-12)

**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)

**iii.** Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than seventy-nine (79) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. ( )

**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 general and controlled hunts by proclamation. Youth-only general hunts are limited to participation by hunters who are ten (10) to seventeen (17) years of age with a valid license. Only hunters nine (9) to seventeen (17) years of age with a valid license may apply for youth-only controlled hunts, provided they are ten (10) to seventeen (17) 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. (3-29-17)

k. Any resident adult person who possesses a controlled hunt permit may designate the controlled hunt permit to his or her resident minor child or grandchild who is qualified to participate in the hunt. The designated child or grandchild shall possess the appropriate tag for the hunt. (3-20-14)

i. Designation of the controlled hunt permit shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

ii. Any resident child or grandchild cannot be designated more than one (1) control hunt permit per calendar year. (4-4-13)

iii. Designation of a controlled hunt permit shall be completed before the first opening hunt date for the permit. (4-4-13)

**I.** Any nonresident adult person who possesses a controlled hunt permit may designate the controlled hunt permit to his or her nonresident minor child or grandchild who is qualified to participate in the hunt. The designated child or grandchild shall possess the appropriate tag for the hunt. (3-20-14)

i. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

ii. Any nonresident child or grandchild cannot be designated more than one (1) control hunt permit per calendar year. (3-29-17)

iii. Designation of a controlled hunt permit shall be completed before the first opening hunt date for the permit. (4-4-13)

**m.** Landowner permission hunt tags will be sold on a first-come, first-served basis at the Headquarters or regional offices of the Idaho Department of Fish and Game after March 20 for spring hunts and July 10 for fall hunts. ( )

**04. Early September Canada Goose Hunts.** Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-29-12)

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

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

DOCKET NO. 13-0110-1801

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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, 36-501 and 36-504, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 5, 2018 Idaho Administrative Bulletin, [Vol. 18-9, pages 114–116](#).

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

There is no fiscal impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Toby Boudreau, (208) 334-2920.

Dated this 26th day of November, 2018.

Toby Boudreau  
Assistant Chief, Bureau of Wildlife  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-2920  
Fax: (208) 334-2114

**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 36-103, 36-104, 36-501 and 36-504, 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 19, 2018.

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:

It is being proposed that IDAPA 13.01.10 be changed to not approve possession, importation, transport, sale, barter, or trade of wild elk, moose, mule deer, white-tailed deer, fallow deer or muntjac deer because of concerns about transmission of Chronic Wasting Disease.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no effect to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol.18-6, Page 49](#).

**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: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Toby Boudreau, (208) 334-2920.

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 26, 2018.

Dated this 7th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)



THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0110-1801

**700. LIST OF SPECIES APPROVED FOR IMPORTATION INTO IDAHO.**

The following species are generally approved to be possessed, imported into or transported, sold, bartered or traded within Idaho. (7-1-99)

**01. Approved License Required.** No person shall import any species of live wildlife without a license approved by the director or his designee. (7-1-99)

**02. Species Allowed for Importation.** The following species have been approved for importation into Idaho (a license is still required): (7-1-99)

- ~~a.~~ *Rocky Mountain Elk. Cervus elaphus canadensis.* (7-1-93)
- ~~b.~~ *Roosevelt Elk. Cervus elaphus roosevelti.* (7-1-93)
- ~~c.~~ *Manitoba Elk. Cervus elaphus manitobensis.* (7-1-93)
- ~~d.~~ Reindeer/Caribou. *Rangifer tarandus* spp. Only allowed south of the Salmon River. (7-1-93)
- ~~e.~~ *Rocky Mountain Mule Deer. Odocoileus hemionus hemionus.* (7-1-93)
- ~~f.~~ Pronghorn/Antelope. *Antilocapra americana americana.* (7-1-93)
- ~~g.~~ Bison/Buffalo. *Bison bison.* (7-1-93)
- ~~h.~~ *Fallow Deer. Dama dama spp.* (7-1-93)
- ~~i.~~ *Muntjac Deer. Muntiacus muntjak spp.* (7-1-93)
- ~~j.~~ Wild Turkey (Merriams, Rio Grande And Eastern). *Melagris gallapavo* spp. (7-1-93)
- ~~k.~~ Pheasants. All species. (7-1-93)
- ~~l.~~ Columbian Sharp-Tailed Grouse. *Pedioecetes phasianellus.* (7-1-93)
- ~~m.~~ Gray/Hungarian Partridge. *Perdix perdix.* (7-1-93)
- ~~n.~~ Chukar Partridge. *Alectoris graeca.* (7-1-93)
- ~~o.~~ Blue Grouse. *Dendrogapus obscurus.* (7-1-93)
- ~~p.~~ Spruce Grouse. *Canochites canadensis.* (7-1-93)
- ~~q.~~ Ruffed Grouse. *Bonasa umbellus.* (7-1-93)
- ~~r.~~ Wild Quail (Northern Bobwhite, California, Mountain And Gambel's). *Colinus virginianus, Callipepla californica, Oreortyx pictus* and *Callipepla gambelii.* (7-1-93)

**03. Fur Farms, Fish Farms, Domestic Cervidae, and Bona Fide Pet Stores.** ~~The Idaho Department of Agriculture regulates~~ fur farms, fish farms, domestic cervidae, and bona fide pet stores ~~are regulated by the Idaho Department of Agriculture.~~ However, a license to import those animals into the state shall be obtained

from the Idaho Department of Fish and Game prior to importation.

~~(7-1-99)~~( )

**04. All Other Species.** All species of live wildlife not listed above in this section as generally approved for importation will be considered on a case-by-case basis. Application shall be made on a department-prepared form and comply with the procedures of Section 101 of these rules. The decision on whether to approve import and possession will be allowed shall be in the director's discretion, based on the protection of Idaho's wildlife from habitat degradation, genetic contamination, competition, or disease. Because of concerns about transmission of Chronic Wasting Disease and other infectious diseases, the department will generally not approve possession, importation, transport, sale, barter, or trade of elk (wild), moose, mule deer, white-tailed deer, fallow deer, or muntjac deer.

~~(7-1-99)~~( )

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

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

DOCKET NO. 13-0110-1802

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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, and 36-502, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018 Idaho Administrative Bulletin, [Vol. 18-10, pages 141–144](#).

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

There is no fiscal impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Toby Boudreau, (208) 334-2920.

Dated this 26th day of November, 2018.

Toby Boudreau  
Assistant Chief, Bureau of Wildlife  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-2920  
Fax: (208) 334-2114

**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is September 28, 2018.

**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, and 36-502, 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 17, 2018.

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:

It is being proposed that IDAPA 13.01.10 be changed to prohibit, with certain exceptions, the importation of carcasses or other parts of deer, elk, or moose from another state, province of Canada, or country with any documented case of Chronic Wasting Disease (CWD) and to create additional transport prohibitions if the Idaho Fish and Game Commission designates any part of Idaho as a CWD Management Zone. These provisions are adopted to proactively reduce transmission risk of CWD into Idaho.

**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 reason:

Implementation of this rule to affect the 2018 hunting season conveys a benefit to managing risk of CWD entering Idaho.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: The temporary and proposed rule change has no associated fee.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There is no negative fiscal impact to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department is unable to determine which Idaho hunters might hunt in states that have documented cases of CWD so there is a lack of identifiable representatives of affected interests to participate in negotiated rulemaking.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: This temporary and proposed rule does not include incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Toby Boudreau, (208) 334-2920.

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 24, 2018.

Dated this 27th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0110-1802**

**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 in this Chapter](#) 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, migratory birds, or rattlesnakes taken from the wild may not be purchased, bartered or sold. (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**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. Accidental death shall include accidental vehicle-collision caused mortality. (3-29-12)

**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, hides, 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. (3-29-12)

c. Parts, including meat, of big game animals, upland game animals, upland game birds, and furbearing animals, which may be lawfully hunted or trapped, that have been accidentally killed as a result of vehicle-collision mortality may be recovered and possessed with notification to the Idaho Department of Fish and Game within twenty-four (24) hours of salvage and with written authorization within seventy-two (72) hours from the Director or a delegate on a form prescribed by the Department, if such taking is not in violation of state, federal, county, or city law, ordinances, rules, or regulations. Mandatory check and report requirements must be followed for bighorn sheep, black bear, mountain lion, mountain goat, moose, gray wolf, bobcat and river otter as described in IDAPA 13.01.08.420 and 13.01.16.500. (3-29-12)

d. Parts, excluding meat, of big game animals (except bighorn sheep), upland game animals, upland game birds, and furbearing animals, which may be lawfully hunted or trapped, that have been accidentally killed as a result of vehicle-collision mortality may be purchased, bartered, or sold, where sale is not specifically prohibited by federal statute or regulation or state statute, when accompanied by written authorization from the Director as described in IDAPA 13.01.10.300.02.c. Bighorn sheep that have been accidentally killed as a result of vehicle-collision mortality may not be purchased, bartered, or sold. (3-29-12)

**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 possession or sale is not prohibited in Idaho or the state, province or country where taken, or by federal law or regulation; (3-23-94)( )

**301. PROHIBITION ON POSSESSION, IMPORTATION, AND TRANSPORTATION OF CERVID CARCASSES OR PARTS FROM AREAS WITH CHRONIC WASTING DISEASE (CWD).**

**01. Prohibitions. It is unlawful to:** ( )

**a. Import into Idaho the carcass or any part of a deer, elk, or moose from another state, province of Canada, or country (other than Canada) with any documented case of CWD;** ( )

**b. Transport the carcass or any part of a deer, elk, or moose out of any CWD Management Zone designated by the Idaho Fish and Game Commission to any portion of the state that is not a designated CWD Management Zone; or** ( )

**c. Possess the carcass or any part of a deer, elk, or moose that: has been imported from another state, province or country (other than Canada) with a documented case of CWD; or transported out of any CWD Management Zone designated by the Idaho Fish and Game Commission to any part of the state that is not a designated CWD Management Zone.** ( )

**02. Exceptions. This section does not apply to the following animal parts:** ( )

**a. Meat that is cut and wrapped;** ( )

**b. Quarters or deboned meat that does not include brain or spinal tissue;** ( )

**c. Edible organs that do not include brains;** ( )

- d. Hides without heads: ( )
  - e. Upper canine teeth (ivories, buglers, or whistlers): ( )
  - f. Finished taxidermy: ( )
  - g. Dried antlers; or ( )
  - h. Cleaned and dried skulls or skull caps. ( )
- 304~~2~~. -- 399. (RESERVED)

**IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME**  
**13.01.16 – THE TRAPPING OF PREDATORY AND UNPROTECTED WILDLIFE**  
**AND THE TAKING OF FURBEARING ANIMALS**

**DOCKET NO. 13-0116-1802**

**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 and 36-1101, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018 Idaho Administrative Bulletin, [Vol. 18-10, pages 145–147](#).

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

There is no fiscal impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cory Mosby, (208) 334-2920.

Dated this 26th day of November, 2018.

Cory Mosby  
Furbearer Staff Biologist  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-2920  
Fax: (208) 334-2114



**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 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 17, 2018.

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:

It is being proposed that IDAPA 13.01.16.400 be changed to revise the distance that ground sets for trapping furbearing animals, or predatory or unprotected wildlife, may be placed from maintained public trails that are paved or unpaved.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no effect to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was initiated. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 50](#). However, the polarity of comments within the scope of rulemaking demonstrated that further negotiation would not lead to consensus and the Fish and Game Commission declared negotiated rulemaking 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: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cory Mosby, (208) 334-2920.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018.

Dated this 27th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0116-1802

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. (4-7-11)

**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: (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**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)~~ ten (10) feet of ~~center-line the~~ edge of any maintained unpaved public trail. (4-7-11)( )

**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. (4-7-11)

**g.** Place any ground set incorporating snare, trap, or attached materials within three hundred (300) feet of any designated public campground, trailhead, paved trail, or picnic area. Cage or box live traps are permitted within three hundred (300) feet of designated public campgrounds, trailheads, paved trails, or picnic areas as allowed by city, county, state, and federal law. (3-29-12)( )

- h.** Place or set any ground set snare without a break-away device or cable stop incorporated within the loop of the snare. (3-29-12)
- i.** Place any ground set incorporating a foothold trap with an inside jaw spread greater than nine (9) inches. (3-29-12)

**IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME**  
**13.01.16 – THE TRAPPING OF PREDATORY AND UNPROTECTED WILDLIFE**  
**AND THE TAKING OF FURBEARING ANIMALS**

**DOCKET NO. 13-0116-1803**

**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 and 36-1101, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 73–75](#).

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

There is no fiscal impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Sharon W. Kiefer, (208) 334-3771.

Dated this 26th day of November, 2018.

Sharon W. Kiefer, Deputy Director  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-3771  
Fax: (208) 334-4885

**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is May 10, 2018.

**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 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 July 18 2018.

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:

The rule removes the restriction that red fox may only be taken by trapping in Valley County and portions of Adams County in the Little Salmon River drainage to align with the Fish and Game Commission adoption of the 2018 Furbearer Season allowing hunting red fox as a method of take in these counties.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate to provide compliance with a deadline in amendment to governing law so that the rule aligns with the method of take for red fox adopted during setting-setting by the Fish and Game Commission in January, 2018.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This rule change has no associated fee.

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

There will not be a negative fiscal impact greater than \$10,000 as a result of this change in rule.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature.

**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:

This rule does not include incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon W. Kiefer, (208) 334-3771.

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 July 25, 2018.

DATED this 24th day of May, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0116-1803

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. (4-7-11)

**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: (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**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. Cage or box live traps are permitted within three hundred (300) feet of designated public campgrounds, trailheads, or picnic areas as allowed by city, county, state, and federal law. (3-29-12)

**h.** Place or set any ground set snare without a break-away device or cable stop incorporated within the loop of the snare. (3-29-12)

**i.** Place any ground set incorporating a foothold trap with an inside jaw spread greater than nine (9) inches. (3-29-12)

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.17 – RULES GOVERNING THE USE OF BAIT AND TRAPPING FOR TAKING BIG GAME ANIMALS

DOCKET NO. 13-0117-1801

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 and 36-1101, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018 Idaho Administrative Bulletin, [Vol. 18-10, pages 148–150](#).

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

There is no fiscal impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cory Mosby, (208) 334-2920.

Dated this 26th day of November, 2018.

Cory Mosby  
Furbearer Staff Biologist  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-2920  
Fax: (208) 334-2114



**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 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 17, 2018.

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:

It is being proposed that IDAPA 13.01.17.400 be changed to revise the distance that ground sets for trapping gray wolves may be placed from maintained public trails that are paved or unpaved.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no effect to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was initiated. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, **Vol 18-6, page 51**. However, the polarity of comments within the scope of rulemaking demonstrated that further negotiation would not lead to consensus and the Fish and Game Commission declared negotiated rulemaking 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: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cory Mosby, (208) 334-2920.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018.

Dated this 27th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0117-1801**

**400. TRAPPING BIG GAME ANIMALS.**

Trapping may be used to take ONLY gray wolf and ONLY under the following conditions. (4-4-13)

**01. Defined Terms.** (4-4-13)

- a.** 'Bait' for trapping purposes is defined as any animal parts; except bleached bones or liquid scent. (4-4-13)
- b.** '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. (4-4-13)
- c.** For trapping purposes, a '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. (4-4-13)

**02. Methods of Take When Trapping.** No person trapping gray wolf shall: (4-4-13)

- a.** Use any set, EXCEPT a ground set. (4-4-13)
- b.** 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; EXCEPT: (4-4-13)
- i.** Gray wolves may be trapped near a big game animal that has died naturally and the carcass has not been repositioned for trapping purposes. Natural causes shall not include any man-caused mortality. (4-4-13)
- ii.** Gray wolves may be trapped using a carcass of a legally taken gray wolf with the hide removed. (4-4-13)
- iii.** Gray wolves may be trapped using the parts of accidentally killed wildlife salvaged in accordance with IDAPA 13.01.10, "Rules Governing the Importation, Possession, Release, Sale or Salvage of Wildlife," Subsections 300.02.c. and 300.02.d. in Game Management Units as identified by the Commission's Big Game Season Proclamation. The Proclamation is published in a brochure available at department offices and license vendors. (4-4-13)
- c.** Use any set within thirty (30) feet of any visible bait; including bait allowed in Subsection 400.02.b.i., 400.02.b.ii., and 400.02.b.iii. (4-4-13)
- d.** 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. (4-4-13)
- e.** Use live animals as a bait or attractant. (4-4-13)
- f.** Place any ground set on, across, or within ~~five (5)~~ **ten (10)** feet of ~~center line~~ **the edge** of any maintained **unpaved** public trail. ~~(4-4-13)~~ **( )**
- g.** 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. (4-4-13)
- h.** Place any ground set incorporating snare, trap, or attached materials within three hundred (300) feet

of any designated public campground, trailhead, paved trail, or picnic area. Cage or box live traps are permitted within three hundred (300) feet of designated public campgrounds, trailheads, paved trails, or picnic areas as allowed by city, county, state, and federal law. ~~(4-4-13)~~( )

**i.** Place or set any ground set snare without a diverter; or without a break-away device or cable stop incorporated within the loop of the snare. (4-4-13)

**j.** Place any ground set incorporating a foothold trap with an inside jaw spread greater than nine (9) inches. (4-4-13)

**k.** Trap any gray wolf within one-half (1/2) mile of any active Department of Fish and Game big game feeding site. (4-4-13)

**l.** Trap gray wolf within two hundred (200) yards of the perimeter of any designated dump ground or sanitary landfill. (4-4-13)

**03. Trapping Hours.** Trapped gray wolves may be dispatched any time of day or night. (4-4-13)

**04. Wounding and Retrieving.** No person shall wound or kill any big game animal without making a reasonable effort to retrieve it and reduce it to possession. (4-4-13)

**05. Unlawful Methods of Take.** No person shall take big game animals as outlined in IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho" Section 410; EXCEPT trapped gray wolves may be dispatched with any rimfire rifle, rimfire handgun or any muzzleloading handgun. (4-4-13)

**IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME**

**13.01.17 – RULES GOVERNING THE USE OF BAIT AND TRAPPING  
FOR TAKING BIG GAME ANIMALS**

**DOCKET NO. 13-0117-1802**

**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 and 36-1101, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 5, 2018 Idaho Administrative Bulletin, [Vol. 18-9, pages 118–120](#).

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

There is no fiscal impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Toby Boudreau, (208) 334-2920.

Dated this 26th day of November, 2018.

Toby Boudreau  
Assistant Chief, Bureau of Wildlife  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-2920  
Fax: (208) 334-2114

**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 26, 2018.

**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 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 19, 2018.

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:

It is being proposed that IDAPA 13.01.17.100 be changed to only allow synthetic liquid scent to attract deer and elk as a measure to reduce risk of Chronic Wasting Disease entering Idaho.

**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: Implementation of this rule to affect the 2018 hunting season confers a risk reduction benefit relative to managing the risk of Chronic Wasting Disease entering Idaho.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: The temporary and proposed rule change has no associated fee.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There is no negative fiscal impact to the state general fund that is estimated to be greater than ten thousand dollars (\$10,000) during the fiscal year.

**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 June 6, 2018 Idaho Administrative Bulletin, [Vol.18-6, Page 52](#).

**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: This temporary and proposed rules does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Toby Boudreau, (208) 334-2920.

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 26, 2018.

Dated this 7th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0117-1802

**100. USE OF BAIT FOR HUNTING.**

Bait for hunting is defined as any substance placed to attract big game animals, except **synthetic** liquid scent for deer and elk. Bait may be used to hunt ONLY black bear and ONLY under the following conditions, EXCEPT gray wolf may be taken incidentally to bear baiting. ~~(4-4-13)~~( )

**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 bait may be placed one (1) week prior to the opening of bear season in Units 10, 12, 16A, 17, 19, 20, 20A, 26 and 27. (4-4-13)

**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); EXCEPT bait, bait containers, and materials may remain in Units 10 and 12 between the dog training season and the fall hunt. (4-4-13)

**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). (3-29-17)

**b.** In all regions except the Panhandle and Clearwater Regions, no bait site may be located within two hundred (200) yards from any maintained trail or any established roadway that is open to the general public for motorized traffic and capable of being traveled by full-sized automobiles; in the Panhandle and Clearwater Regions, no bait site may be located within two hundred (200) feet from any maintained trail or any established roadway that is open to the general public for motorized traffic and capable of being traveled by full-sized automobiles. (3-29-17)

**c.** 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. (4-7-11)

**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 13 – IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.18 – RULES GOVERNING EMERGENCY FEEDING OF ANTELOPE, ELK, AND DEER OF THE IDAHO FISH AND GAME COMMISSION

DOCKET NO. 13-0118-1801

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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, 36-105 and 36-111, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 5, 2018 Idaho Administrative Bulletin, [Vol. 18-9, pages 121–123](#).

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

There is no fiscal impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Toby Boudreau, (208) 334-2920.

Dated this 26th day of November, 2018.

Toby Boudreau  
Assistant Chief, Bureau of Wildlife  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-2920  
Fax: (208) 334-2114



**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 36-103, 36-104, 36-105 and 36-111, 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 19, 2018.

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:

It is being proposed that IDAPA 13.01.18 be changed to integrate risk of Chronic Wasting Disease (CWD) into the conditions and criteria considered by Idaho Department of Fish and Game for emergency winter feeding of deer and elk, prohibit private feeding of deer and elk within any CWD Management Zone and to make a technical correction to the chapter title.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no effect to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule addresses conditions and criteria considered by Idaho Department of Fish and Game regarding emergency winter feeding that the agency may conduct.

**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: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Toby Boudreau, (208) 334-2920.

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 26, 2018.

Dated this 6th day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0118-1801

**13.01.18 – RULES GOVERNING EMERGENCY FEEDING OF PRONGHORN ANTELOPE, ELK,  
AND DEER ~~OF THE IDAHO FISH AND GAME COMMISSION~~**

**000. LEGAL AUTHORITY.**

The Idaho Fish and Game Commission is authorized to adopt rules concerning the administration of the wildlife policy of the state of Idaho in accordance with the Idaho fish and game code under Sections 36-103(b), 36-104(b), and 36-105(1), Idaho Code, and specifically concerning emergency feeding of pronghorn antelope, elk, and deer under Section 36-111(1), Idaho Code. (4-3-95)( )

**001. TITLE AND SCOPE.**

The title of this chapter is “Rules Governing Emergency Feeding of Pronghorn Antelope, Elk, and Deer ~~of the Idaho Fish and Game Commission~~.” These rules govern winter emergency feeding operations, and establish the criteria for determining a feeding emergency, and prohibit private feeding within a designated CWD Management Zone. (4-3-95)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. INTENT.**

The Idaho Fish and Game Commission recognizes ~~that~~ the importance of maintaining big game populations should be maintained under natural conditions and by naturally available forage. Winter forage is the major limiting factor which determines the basic size of the big game populations, and it must be maintained if the animals are to prosper and propagate. ~~In order to~~ To maintain these winter ranges, big game numbers must be controlled through adequate harvest. The Commission does not sanction ~~any~~ widespread supplemental winter feeding programs. Additionally, ~~big game animals, especially elk, when concentrated by~~ supplemental feeding are concentrates big game animals, making deer and elk very susceptible to spreading or contracting Chronic Wasting Disease (CWD) as well as other infectious diseases which that can be transmitted to livestock. The risk of disease transmission may factor into making a supplemental feeding decision. However, bBig game harvests and weather vary from year to year throughout the state. In most years and areas, snow depths, temperatures, and animal body condition do not create adverse conditions for wintering animals. Unusual weather conditions, limited winter forage, or other circumstances may create critical periods of stress for animals or force them into areas involving public safety. The Commission is unable to manage the big game populations for extreme weather. Therefore, emergency feeding of big game is appropriate under certain criteria. (4-3-95)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**102. EMERGENCY FEEDING CRITERIA.**

**01. Declaration of Feeding Emergency.** A feeding emergency may be declared if one (1) or more of the following criteria are met: (4-3-95)

- a. Actual or imminent threat of depredation to private property. (4-3-95)
- b. Threat to public safety, including traffic hazards. (4-3-95)

- c. Excessive mortality which would affect the recovery of the herd. (4-3-95)
- d. Limited or unavailable winter forage caused by fire or unusual weather. (4-3-95)
- 02. **Additional Guidelines.** The Regional Supervisors may develop additional guidelines on emergency feeding within the listed criteria based on risk of disease transmission local conditions and local public input. ~~(4-3-95)~~ ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**104. -- ~~91~~99. (RESERVED)**

**200. PROHIBITION ON PRIVATE FEEDING OF DEER AND ELK WITHIN DESIGNATED CWD MANAGEMENT ZONE.**

**01. Prohibition.** It is unlawful to purposely or knowingly provide supplemental feed to deer and elk within any CWD Management Zone designated by the Idaho Fish and Game Commission, except supplemental or emergency feeding activities conducted or authorized by the Idaho Department of Fish and Game. ( )

**02. Incidental Grazing.** Incidental grazing by big game animals on private rangeland forage, standing agricultural crops, or agricultural crop residue left on the ground following typical harvest practices is not a violation of this section. ( )

**03. Incidental Feeding.** Incidental feeding of big game animals during the normal practice of providing feed to livestock in the winter is not a violation of this section. ( )

**201. – 999. (RESERVED)**

**IDAPA 20 – IDAHO DEPARTMENT OF LANDS**  
**20.03.01 – DREDGE AND PLACER MINING OPERATIONS IN IDAHO**  
**DOCKET NO. 20-0301-1801**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 Title 47 Chapter 15, including Section 47-1505, 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 Idaho Department of Lands is developing a web-based portal and information management system that will allow for submittal of applications and other documents electronically. Currently, IDAPA 20.03.01 requires paper copies and, in some instances, certified mail submittals. The proposed changes remove the requirement for paper submittals, which will allow permittees and operators to submit documents by paper copy or in electronic format.

Additional changes include the following:

- Addition of required Sections 001. Title and Scope; 002. Written Interpretations; 004. Incorporation by Reference; 005. Office Hours—Mailing Address-Street Address; and 006. Public Records Act Compliance. These sections are now required in rule but were not when the rules were created and last revised.
- New abbreviations have also been added to the rule.
- IDAPA 20.03.02.022.06 references water quality standards regulations established under Title 39, Chapter 1, Idaho Code. Title 39, Chapter 1 covers multiple areas of the Idaho Department of Environmental Quality’s regulatory authority. This rule change proposes adding reference to the specific water quality rules sections of IDAPA: IDAPA 58.01.02 and IDAPA 58.01.11. This change is intended to help clarify and direct potential permittees to pertinent rule sections only.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 5, 2018, Idaho Administrative Bulletin, [Vol. 18-9, pages 286-296](#).

**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 Todd Drage, Regulatory Minerals Program Manager, at (208) 334-0247.

Dated this 16th day of October, 2018.

Todd Drage  
Regulatory Minerals Program Manager  
Resource Protection and Assistance Bureau  
Idaho Department of Lands

300 N. 6th Street, Suite 103  
Boise, ID 83720-0050  
Phone: (208) 334-0247  
Fax: (208) 769-3698

**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 Title 47 Chapter 15, including Section 47-1505, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**PUBLIC HEARING**  
**Thursday, September 20, 2018 – 2:30 p.m.**

**Idaho State Capitol**  
**Room WW55**  
**700 West Jefferson Street**  
**Boise, ID 83702**

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

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

The Idaho Department of Lands is developing a web-based portal and information management system that will allow for submittal of applications and other documents electronically. Currently, IDAPA 20.03.01 requires paper copies and, in some instances, certified mail submittals. The proposed changes remove the requirement for paper submittals, which will allow permittees and operators to submit documents by paper copy or in electronic format.

Additional changes include the following:

- Addition of required Sections 001. Title and Scope; 002. Written Interpretations; 004. Incorporation by Reference; 005. Office Hours–Mailing Address–Street Address; and 006. Public Records Act Compliance. These sections are now required in rule but were not when the rules were created and last revised.
- New abbreviations have also been added to the rule.
- IDAPA 20.03.01.022.06 references water quality standards regulations established under Title 39, Chapter 1, Idaho Code. Title 39, Chapter 1 covers multiple areas of the Idaho Department of Environmental Quality’s regulatory authority. This rule change proposes adding reference to the specific water quality rules sections of IDAPA: IDAPA 58.01.02 and IDAPA 58.01.11. This change is intended to help clarify and direct potential permittees to pertinent rule sections only.

**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:

No fiscal impact to the state general fund is anticipated as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was conducted pursuant to Section 67-5220(1), Idaho Code. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin [Volume 18-6, Page 80](#).

**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:

No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Todd Drage, Regulatory Minerals Program Manager, at (208) 334-0247.

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 26, 2018.

DATED this 5th day of September, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 20-0301-1801

~~001.~~ ~~002.~~ ~~(RESERVED)~~ **TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 20.03.01 “Rules Governing Dredge and Placer Mining Operations in Idaho,” IDAPA 20, Title 03, Chapter 01. ( )

**02. Scope.** These rules constitute the Idaho Department of Lands’ administrative procedures for implementation of the Idaho Dredge and Placer Mining Protection Act with the intent and purpose to protect the lands, streams and watercourses within the state, from destruction by dredge mining and by placer mining, and to preserve the same for the enjoyment, use and benefit of all of the people, and that clean water in the streams of Idaho is in the public interest. These rules shall be construed in a manner consistent with the duties and responsibilities of the Board as set forth in Title 47, Chapter 13. ( )

**002. WRITTEN INTERPRETATIONS.**

The Department maintains written interpretations of its rules which may include, but may not be limited to written procedures manuals and operations manuals and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals, and other written interpretations, if applicable, are available for public inspection and copying at the Idaho Department of Lands, 300 North 6th Street, Suite 103, Boise Idaho 83720. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference into this rule. ( )

**005. OFFICE – OFFICE HOURS – MAILING ADDRESS – STREET ADDRESS – WEB ADDRESS.**

The principal place of business of the Department of Lands is in Boise, Idaho. The office is located at 300 North 6th Street, Suite 103, Boise, Idaho and is open from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone of the office is (208) 334-0200 and the fax number is (208) 334-3698. The Department’s web address is located at [www.idl.idaho.gov](http://www.idl.idaho.gov). ( )

**0046. PUBLIC RECORDS ACT COMPLIANCE.**

~~Confidentiality of Information. Notice of exploration as required under Title 47, Chapter 1314(b), Idaho Code, shall not be disclosed by the board, director, or department employees to any person other than the board, director, and employees of the department without the written permission of the operator. However, the provisions of Title 74, Chapter 1, Idaho Code, shall apply after July 1, 1993~~ The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records. (4-1-91)( )

**0057. -- 009. (RESERVED)**

**010. DEFINITIONS.**

- 01. Act.** The Idaho Placer and Dredge Mining Protection Act, Title 47, Chapter 13, Idaho Code. (4-1-91)
- 02. Approximate Previous Contour.** A contour reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. (4-1-91)
- 03. Best Management Practices (“BMPs”).** Methods, measures, or practices to prevent or reduce nonpoint source (NPS) water pollution, including, but not limited to, structural and nonstructural controls, and operation and maintenance procedures. Usually, BMPs are applied as a system of practices rather than a single practice. BMPs are selected on the basis of site-specific conditions that reflect natural background conditions; political, social, economic, and technical feasibility; and stated water quality goals. (4-1-91)( )
- 04. Board.** The State Board of Land Commissioners or any department, commission, or agency that may lawfully succeed to the powers and duties of such board. (4-1-91)
- 05. Department.** The Idaho Department of Lands whose business address is 300 North 6th Street, Suite 103, PO Box 83720, Boise, Idaho 83720-0050. (4-1-91)
- 06. DEQ.** The Department of Environmental Quality. (4-1-91)
- 07. Director.** The director of the Department of Lands or such representative as may be designated by the director. (4-1-91)
- 08. Disturbed Land or Affected Land.** Land, natural watercourses, or existing stockpiles and waste piles affected by placer or dredge mining, remining, exploration, stockpiling of ore wastes from placer or dredge mining, or construction of roads, tailings ponds, structures, or facilities appurtenant to placer or dredge mining operations. (4-1-91)
- 09. Final Order of the Board.** A written notice of rejection or approval, the order of a hearing officer at the conclusion of a hearing, or any other order of the board where additional administrative remedies are not available. (4-1-91)
- 10. Hearing Officer.** That person duly appointed by the board to hear proceedings under Section 47-1320, Idaho Code. It also means that person selected by the director to hear proceedings initiated under Section 030 or Section 051 of these rules. (4-1-91)
- 11. Mine Panel.** That area designated by the permittee as an identifiable portion of a placer or dredge mine on the map submitted pursuant to Section 47-1317, Idaho Code. (4-1-91)
- 12. Mineral.** Any ore, rock or substance extracted from a placer deposit or from an existing placer stockpile or wastepile, but does not include coal, clay, stone, sand, gravel, phosphate, uranium, oil or gas. (4-1-91)
- 13. Motorized Earth-Moving Equipment.** Backhoes, bulldozers, front-loaders, trenchers, core drills, draglines, and suction dredges with an intake diameter exceeding eight (8) inches, and other similar equipment. (4-1-91)

14. **Mulch.** Vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation. (4-1-91)
15. **Natural Watercourse.** Any stream in the state of Idaho having definite bed and banks, and which confines and conducts continuously flowing water. (4-1-91)
16. **Overburden.** Material extracted by a permittee which is not a part of the material ultimately removed from a placer or dredge mine and marketed by a permittee, exclusive of mineral stockpiles. Overburden is comprised of topsoil and waste. (4-1-91)
17. **Overburden Disposal Area.** Land surface upon which overburden is piled or planned to be piled. (4-1-91)
18. **Permanent Cessation.** Mining operations as to the whole or any part of the permit area have stopped and there is substantial evidence that such operations will not resume within one (1) year. The date of permanent cessation is the last day when mining operations are known or can be shown to have occurred. (4-1-91)
19. **Permit Area.** That area designated under Section 021 as the site of a proposed placer or dredge mining operation, including all lands to be disturbed by the operation. (4-1-91)
20. **Permittee.** The person in whose name the permit is issued and who is to be held responsible for compliance with the conditions of the permit by the department. (4-1-91)
21. **Person.** Any person, corporation, partnership, association, or public or governmental agency engaged in placer or dredge mining, whether individually, jointly, or through subsidiaries, agents, employees, or contractors. (4-1-91)
22. **Pit.** An excavation created by the extraction of minerals or overburden during placer mining or exploration operations. (4-1-91)
23. **Placer Deposit.** Naturally occurring unconsolidated surficial detritus containing valuable minerals, whether located inside or outside the confines of a natural watercourse. (4-1-91)
24. **Placer Stockpile.** Placer mineral extracted during past or present placer or dredge mining operations and retained at the mine for future rather than immediate use. (4-1-91)
25. **Placer or Dredge Exploration Operation.** Activities including, but not limited to, the construction of roads, trenches, and test holes performed on a placer deposit for the purpose of locating and determining the economic feasibility of extracting minerals by placer or dredge mining. (4-1-91)
26. **Placer or Dredge Mining or Dredge or Other Placer Mining.** The extraction of minerals from a placer deposit, including remaining for sale, processing, or other disposition of earth material excavated from previous placer or dredge mining. (4-1-91)
27. **Placer or Dredge Mining Operation.** Placer or dredge mining which disturbs in excess of one-half (1/2) acre of land during the life of the operation. (4-1-91)
28. **Reclamation.** The process of restoring an area disturbed by a placer or dredge mining operation or exploration operation to its original or another beneficial use, considering land uses, possible future uses, and surrounding topography. The objective is to re-establish a diverse, self-perpetuating plant community, and to minimize erosion, remove hazards, and maintain water quality. (4-1-91)
29. **Revegetation.** The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by placer or dredge mining operations. (4-1-91)
30. **Road.** A way including the bed, slopes, and shoulders constructed within the circular tract circumscribed by a placer or dredge mining operation, or constructed solely for access to a placer or dredge mining



operation or placer or dredge exploration operation. A way dedicated to public multiple use or being used by a governmental land manager or private landowner at the time of cessation of operations and not constructed solely for access to a placer or dredge mining operation or exploration operation, shall not be considered a road. (4-1-91)

**31. Settling Pond.** A manmade enclosure or natural impoundment structure constructed and used for the purpose of treating mine process water and/or runoff water from adjacent disturbed areas by the removal or settling of sediment particles. Several types of settling ponds or a series of smaller ponds may be used in water management. The most common type is a recycle or recirculation pond which is used to pump clarified water back to the wash plant operation. (4-1-91)

**32. Surface Waters.** The surface waters of the state of Idaho. (4-1-91)

**33. Topsoil.** The unconsolidated mineral and organic matter naturally present on the surface of the earth that is necessary for the growth and regeneration of vegetation. (4-1-91)

**011. ABBREVIATIONS.**

**01. BMP. Best Management Practices.** ( )

**02. DEQ. Department of Environmental Quality.** ( )

**01+2. PURPOSE AND GENERAL PROVISIONS.**

**01. Policy.** It is the policy of the state of Idaho to protect the lands, streams, and watercourses within the state from destruction by placer mining, and to preserve them for the enjoyment, use, and benefit of all of the people, and that clean water in the streams of Idaho is in the public interest. (4-1-91)

**02. Purpose.** These rules are intended to implement the requirements for operation and reclamation of placer and dredge mining set forth in the Idaho Code. Compliance with these rules will allow removal of minerals while preserving water quality and ensuring rehabilitation for beneficial use of the land following mining. Placer and dredge mining is expressly prohibited upon certain waterways included in the federal wild and scenic rivers system. It is also the purpose of these rules to implement the state of Idaho's antidegradation policy as set out in Executive Order No. 88-23 as it pertains to placer mining and exploration operations. (4-1-91)

**03. General Provisions.** In general, these rules establish: (4-1-91)

**a.** Requirements for placer mine exploration operations; (4-1-91)

**b.** Procedures for securing a placer and dredge mining permit; (4-1-91)

**c.** The requirements for posting a performance bond as a condition of such permit to ensure the completion of rehabilitation operations; (4-1-91)

**d.** Procedures for initial and periodic inspection of placer and dredge mining operations to ensure compliance with these rules; (4-1-91)

**e.** Prohibition of placer and dredge mining on designated watercourses (see Section 060); and (4-1-91)

**f.** Prohibitions against placer and dredge mining on certain lands when not in the public interest. (4-1-91)

**04. Compliance with Other Laws.** Placer and dredge exploration operations and mining operations shall comply with all applicable rules and laws of the state of Idaho including, but not limited to, the following: (4-1-91)

**a.** Idaho Environmental Protection and Health Act, Title 39, Chapter 1, Idaho Code, and rules as

promulgated and administered by the Idaho Department of Environmental Quality. (4-1-91)

**b.** Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and applicable rules as promulgated and administered by the Idaho Department of Water Resources. (4-1-91)

**c.** Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code, and applicable rules and regulations as promulgated and administered by the Idaho Department of Water Resources. (4-1-91)

**01~~2~~3. APPLICABILITY.**

**01. All Lands in State.** These rules apply to all lands within the state, including private and federal lands, which are disturbed by placer or dredge mining conducted after November 24, 1954. (4-1-91)

**02. Types of Operations.** These rules apply to placer and dredge mining operations and placer and dredge exploration operations as defined under Section 47-1313, Idaho Code, and Subsections 010.25, 010.26, and 010.27 and to the following activities: (4-1-91)

**a.** The extraction of minerals from a placer deposit, including the removal of vegetation, topsoil, overburden, and minerals; construction, and operation of on-site processing equipment; disposal of overburden and waste materials; design and operation of siltation and other water quality control facilities; and other activities contiguous to the mining site that disturb land and affect water quality and/or water quantity. (4-1-91)

**b.** All exploration activities conducted upon a placer deposit using motorized earth-moving equipment. (4-1-91)

**03. Nonapplicability.** These rules do not apply to mining operations regulated by the Idaho Surface Mining Act; neither do they apply to surface disturbance caused by the underground mining of a placer deposit, unless the deposit outcrops on or near the surface and the operation will result in the probable subsidence of the land surface. (4-1-91)

**04. Stream Channel Alterations.** These rules do not exempt the permittee from obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources. (4-1-91)

**05. Navigational Improvements.** These rules do not apply to dredging operations conducted for the sole purpose of establishing and maintaining a channel for navigation. (4-1-91)

**06. Suction Dredges.** These rules do not apply to dredging operations in streams or riverbeds using suction dredges with an intake diameter of eight (8) inches or less. However, these rules do not affect or exempt the applicability of Section 47-701, Idaho Code, regarding leasing of the state-owned beds of navigable lakes, rivers, and streams, Section 47-703A, Idaho Code, regarding exploration on navigable lakes and streams, and Section 39-118, Idaho Code, regarding review of plans for waste treatment or disposal facilities such as settling or recycle ponds. (4-1-91)

**01~~3~~4. ADMINISTRATION.**

The Department of Lands shall administer these rules under the direction of the director. (4-1-91)

**01~~4~~5. -- 019. (RESERVED)**

**020. PLACER OR DREDGE EXPLORATION OPERATIONS.**

**01. Notice.** Any person desiring to conduct placer or dredge exploration operations using motorized earth-moving equipment shall, within seven (7) days of commencing exploration, notify the director *by certified mail.* The notice shall include the following: (4-1-91)( )

**a.** The name and address of the operator; (4-1-91)

**b.** The legal description of the exploration operation and its starting and estimated completion date;

and (4-1-91)

c. The anticipated size of the exploration operation and the general method of operation. (4-1-91)

**02. Confidentiality.** The exploration notice shall be treated confidential pursuant to Sections 74-107 and 47-1314, Idaho Code. (4-1-91)

**03. One-Half Acre Limit.** Any placer or dredge exploration operation which causes a cumulative surface disturbance in excess of one-half (1/2) acre of land, including roads, shall be considered a placer or dredge mining operation and subject to the requirements outlined in Sections 021 through 065. Lands disturbed by any placer or dredge exploration operation which causes a cumulative surface disturbance of less than one-half (1/2) acre of land, including roads, shall be restored to conditions reasonably comparable to conditions existing prior to the placer or dredge exploration operation and as outlined in Subsection 020.04. (4-1-91)

**04. Reclamation Required.** The following reclamation activities, required to be conducted on exploration sites, shall be performed in a workmanlike manner with all reasonable diligence, and as to a given exploration drill hole, road, pit, or trench, within one (1) year after abandonment thereof: (4-1-91)

a. Drill holes will be plugged within one (1) year of abandonment with a permanent concrete or bentonite plug. (4-1-91)

b. Restore all disturbed lands, including roads, to conditions reasonably comparable to conditions existing prior to the placer or dredge exploration operations. (47-1314(b)) (4-1-91)

c. Conduct revegetation activities in accordance with Subsection 040.17. Unless otherwise required by a federal agency, one (1) pit or trench on a federal mining claim showing discovery, may be left open pending verification by federal mining examiners. Such abandoned pits and trenches shall be reclaimed within one (1) year of verification; (4-1-91)

d. If water runoff from exploration operations causes siltation or other pollution of surface waters, the operator shall prepare disturbed lands and adjoining lands under his or her control, as is necessary to meet state water quality standards. (4-1-91)

e. Abandoned lands disturbed by an exploration operation shall be top-dressed to the extent that such overburden is reasonably available from any pit or other excavation created by the exploration operation, with that type of overburden that is conducive to the control of erosion or the growth of vegetation that the operator elects to plant thereon; (4-1-91)

f. Any water containment structure created in connection with exploration operations shall be constructed, maintained, and reclaimed so as not to constitute a hazard to human health or the environment. (4-1-91)

## **021. APPLICATION PROCEDURE FOR PLACER OR DREDGE MINING PERMIT.**

**01. Approved Reclamation Plan Required.** No permittee shall conduct placer or dredge mining operations, as defined in these rules, on any lands in the state of Idaho until the placer mining permit has been approved by the board, the department has received a bond meeting the requirements of these rules, and the permit has been signed by the director and the permittee. (4-1-91)

**02. Application Package.** The permittee must submit ~~five (5) copies of the placer mining~~ a complete application package, for each separate placer mine or mine panel, before the placer permit will be reviewed. Separate placer mines are individual, physically disconnected operations. The complete application package consists of: (4-1-91)( )

a. An application completed by the applicant on a form provided by the director; (4-1-91)

b. A map or maps of the proposed mining operation which includes the information required under Subsection 021.04; (4-1-91)

c. A reclamation plan, in map and narrative form, which includes the information required under Subsection 021.06. The map and reclamation plan may be combined on one (1) sheet if practical; (4-1-91)

d. Document(s) identifying and assessing foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters, and the best management practices the applicant will take to control such nonpoint source impacts; (4-1-91)

e. When the director determines, after consultation with DEQ, that there is an unreasonably high potential for nonpoint source pollution of adjacent surface waters, the director shall request, and the applicant shall provide to the director, baseline pre-project surface water monitoring information and furnish ongoing monitoring data during the life of the project. This provision shall not require any additional baseline preproject surface water monitoring information or ongoing monitoring data where such information or data is already required to be provided pursuant to any federal or state law and is available to the director; (4-1-91)

f. An out-of-state permittee shall designate an in-state agent authorized to act on behalf of the permittee. In case of an emergency requiring action to be taken to prevent environmental damage, the authorized agent will be notified as well as the permittee; and (4-1-91)

g. An application fee of fifty dollars (\$50) for each ten (10) acres or fraction of land included in an application for a new mining permit, or of land to be affected or added in an amended application to an existing mining permit, must be included with the application. No application fee shall exceed one thousand dollars (\$1,000). (4-1-91)

**03. Incomplete Applications.** An application for a permit may be returned for correction if the information provided on the application form or associated mine map(s) or reclamation plan is incomplete or otherwise unsatisfactory. The director shall not proceed on the application until all necessary information is submitted. (4-1-91)

a. If the applicant is not the owner of the lands described in the application, or any part thereof, the land owner shall endorse his approval of the application prior to issuance of a permit. The federal government, as a property owner, will be notified of the application, and asked to endorse the application as property owner. For mining operations proposed upon land under a mining lease, either the signature of the lessor shall be affixed to the application or a copy of the complete lease attached to the application. (4-1-91)

**04. Requirements of Maps.** Vicinity maps shall be prepared on standard United States Geological Survey, seven and one-half (7.5) minute quadrangle maps, or equivalent. In addition, maps of the proposed placer mining operation site shall be of sufficient scale to adequately show the following: (4-1-91)

a. The location of existing roads and anticipated access and main haulage roads planned for construction in connection with the mining operation, along with approximate dates for construction, reconstruction, and abandonment; (4-1-91)

b. The approximate location, and the names of all known streams, creeks, springs, wells, or bodies of water within one thousand (1,000) feet of the mining operation; (4-1-91)

c. The approximate boundaries of all lands to be disturbed in the process of mining, including legal description to the quarter-quarter section; (4-1-91)

d. The approximate boundaries and acreage of the lands that will become disturbed land as a result of the placer or dredge mining operation during the first year of operations following issuance of a placer mining permit; (4-1-91)

e. The planned location and configuration of pits, mineral stockpiles, topsoil stockpiles, and waste dumps within the mining property; (4-1-91)

f. Scaled cross-sections, of length and width, which are representative of the placer or dredge mining

operation, showing the surface contour prior to mining and the expected surface contour after reclamation activities have been completed; (4-1-91)

**g.** The location of required settling ponds, the design plans, construction specifications and narrative to show they meet both operating requirements and protection from erosion, seepage, and flooding that can be anticipated in the area. Where a dredge is operating in a stream, describe by drawing and narrative, the operation of the filtration equipment to be used to clarify the water. (4-1-91)

**h.** Surface and mineral control or ownership of appropriate scale for boundary identification. (4-1-91)

**05. Settling Ponds.** Detailed plans and specifications for settling ponds shall be drawn to a scale of one (1) inch = ten (10) feet and include the following: (4-1-91)

**a.** A detailed map of the settling pond location, including: (4-1-91)

**i.** Dimensions and orientation of the settling ponds and/or other wastewater treatment components of the operation; (4-1-91)

**ii.** Distance from surface waters; (4-1-91)

**iii.** Pond inlet/outlet locations including emergency spillways and detailed description of control structures and piping; (4-1-91)

**iv.** Location of erosion control structures; and (4-1-91)

**v.** Ten (10) year flood elevation (probable high water mark). (4-1-91)

**b.** A detailed cross-section of the pond(s) including: (4-1-91)

**i.** Dimensions and orientation; (4-1-91)

**ii.** Proposed sidewall elevations; (4-1-91)

**iii.** Proposed sidewall slope; (4-1-91)

**iv.** Sidewall width; (4-1-91)

**v.** Distance from and elevation above all surface water; and (4-1-91)

**vi.** Slope of settling pond location. (4-1-91)

**c.** Narrative of the construction method(s) describing: (4-1-91)

**i.** Bottom material; (4-1-91)

**ii.** Sidewall material; (4-1-91)

**iii.** Pond volume; (4-1-91)

**iv.** Volume of water to be used in the wash plant; (4-1-91)

**v.** Discharge or land application requirements; (4-1-91)

**vi.** Any pond liners or filter materials to be installed; and (4-1-91)

**viii.** Compaction techniques. (4-1-91)

- d. If the proposed ponds are: (4-1-91)
  - i. Less than two thousand five hundred (2,500) feet square surface area; (4-1-91)
  - ii. Less than four (4) feet high; (4-1-91)
  - iii. Greater than fifty (50) feet from surface water; and (4-1-91)
  - iv. Constructed on slopes of three: one (3:1) or flatter, the plans and specifications for settlements ponds shall contain information in Subsections 021.05.a.i., 021.05.a.ii., and 021.05.a.iv.; 021.05.b.i., 021.05.b.ii., 021.05.b.v. and 021.05.b.vi. This information may be prepared as a sketch map showing appropriate elevations, distances and other required details. (4-1-91)

**06. Requirements for Reclamation Plan.** A reclamation plan must be submitted in map and narrative form and include the following: (4-1-91)

- a. Show how watercourses disturbed by the mining operation shall be replaced on meander lines with a pool structure conducive to good fish and wildlife habitat and recreational use. Show how and where riprap or other methods of bank stabilization will be used to ensure that, following abandonment, the stream erosion will not exceed the rate normally experienced in the area. If necessary, show how the replaced watercourse will not contribute to degradation of water supplies; (4-1-91)
- b. Describe and show the contour of the proposed mine site after final backfilling and/or grading, with grades listed for slopes after mining; (4-1-91)
- c. On a drainage control map, show the best management practices to be utilized to minimize erosion on disturbed lands; (4-1-91)
- d. Show roads to be reclaimed upon completion of mining; (4-1-91)
- e. Show plans for both concurrent and final revegetation of disturbed lands. Indicate soil types, slopes, precipitation, seed rates, species, topsoil, or other growth medium storage and handling, time of planting, method of planting and, if necessary, fertilizer and mulching rates; (4-1-91)
- f. The planned reclamation of tailings or sediment ponds; (4-1-91)
- g. An estimate of total reclamation cost to be used in establishing bond amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and administrative overhead. (4-1-91)
- h. Make a premining estimate of trees on the site by species and forest lands utilization consideration in reclamation. (4-1-91)

**07. State Approval Required.** Approval of a placer mining permit must be obtained under these rules, even if approval of such plan has been or is obtained from an appropriate federal agency. (4-1-91)

**08. Application Review and Inspection.** If the director determines that an inspection is necessary, the applicant may be contacted and asked that he or his duly authorized employee or representative be present for inspection at a reasonable time. An inspection may be required prior to issuance of the permit. The applicant shall make such persons available for the purpose of inspection (see Subsection 051.01). Failure to provide a representative does not mean that the state will not conduct such inspection. (4-1-91)

**022. PROCEDURES FOR REVIEW AND DECISION UPON AN APPLICATION.**

**01. Decision on Application.** Following director review of an application for a new permit or to amend an existing permit and opportunity to correct any deficiencies, the board shall approve or disapprove the application and the director shall notify the applicant of the board's decision by mail. Such notice shall contain any reservations

conditioned with the approval, or the information required to be given under Subsections 022.07 and 022.09 if disapproved. If approved, a permit shall be issued after the bonding requirements of Section 035 are met. No mining shall be allowed until the permit is bonded and applicant is notified by mail or telephone of approval. (4-1-91)

**02. Public Hearings.** For the purpose of determining whether a proposed application complies with these rules, the director may call for a public hearing, as described in Section 030. (4-1-91)

**03. Adverse Weather.** If weather conditions prevent the director from inspecting the proposed mining site to acquire the information required to evaluate the application, the application may be placed in suspense, pending improved weather conditions. The applicant will be notified in writing of this action. (4-1-91)

**04. Interagency Comment.** Nonconfidential materials submitted under Section 021 shall be forwarded by the director to the Departments of Water Resources, Environmental Quality (DEQ), and Fish and Game for review and comment. If operations are to be located on federal lands, the department will notify the U. S. Bureau of Land Management or the U.S. Forest Service. The director may provide public notice on receipt of a reclamation plan. In addition, a copy of an application will be provided to individuals who request the information in writing, subject to Title 9, Chapter 3, Idaho Code. (4-1-91)

**05. Stream Alteration Permits.** No permit will be issued proposing to alter, occupy or to dredge any stream or watercourse without notification to the Department of Water Resources of the pending application. The Department of Water Resources shall respond to said notification within twenty (20) days. If a stream channel alteration permit is required, it must be issued prior to issuance of the placer and dredge permit. (4-1-91)

**06. Water Clarification.** No permit shall be issued until the director is satisfied that the methods of water clarification proposed by the applicant are of sound engineering design and capable of meeting the [water quality](#) standards established under Title 39, Chapter 1, Idaho Code, [and IDAPA 58.01.02, "Water Quality Standards," IDAPA, 58.01.11, "Ground Water Quality Rule."](#) ~~(4-1-91)~~ ( )

**07. Permit Denial Authority.** The State Board of Land Commissioners shall have the power to deny any application for a permit on state lands, streams, or riverbeds, or on any unpatented mining claims, upon its determination that a placer or dredge mining operation on the area proposed would not be in the public interest, giving consideration to economic factors, recreational use for such lands, fish and wildlife habitat, and other factors which in the judgement of the board may be pertinent, and may deny any application upon notification by the Department of Water Resources that the granting of such permit would result in permanent damage to the stream channel. (Section 47-1317(j), Idaho Code) (4-1-91)

**08. Permit Conditions.** If an application fails to meet the requirements of these rules, the board may issue a permit subject to conditions that bring the application into compliance with these rules. The applicant may accept or refuse the permit. Refusal to accept the permit shall be considered a denial under Subsection 022.09. (4-1-91)

**09. Amended Applications.** If the board disapproves the application, the applicant shall be informed of the rules that have not been complied with, the manner in which they have not been complied with, and the requirements necessary to correct the deficiencies. The applicant may then submit an amended application, which will be processed as described in Section 022. (4-1-91)

**10. Permit Offering.** Upon approval by the board, the applicant will be notified of the action and the amount of bond required. Upon receipt of the required bond, the permit will be sent to the applicant for signature. If the bond and the permit, signed by the applicant, are not received within twelve (12) months of board action, the approval shall be automatically rescinded, except that upon written request of the applicant, and for good cause, the director may defer decision of the board's approval for a reasonable period of time not to exceed one (1) year. The director shall notify the applicant of his decision in writing. (4-1-91)

**11. Reclamation Obligations.** The permit issued by the board shall govern and determine the nature and extent of the reclamation obligations of the permittee. (4-1-91)

**IDAPA 20 – IDAHO DEPARTMENT OF LANDS**  
**20.03.02 – RULES GOVERNING EXPLORATION, SURFACE MINING,**  
**AND CLOSURE OF CYANIDATION FACILITIES**

**DOCKET NO. 20-0302-1801**

**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 Title 47 Chapter 15, including Section 47-1505, 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 Idaho Department of Lands is developing a web-based portal and information management system that will allow for submittal of applications and other documents electronically. Currently, IDAPA 20.03.02 requires paper copies and, in some instances, certified mail submittals. The proposed changes remove the requirement for paper submittals, which will allow permittees and operators to submit documents by paper copy or in electronic format.

Additional changes include the following:

- Updates to Section 005 – Office Hours – Mailing Address and Street Address.
- Addition of new abbreviations.
- IDAPA 20.03.02.120.03 states that only surface mining reclamation bonds obtained after January 1, 1997, may be addressed at actual costs plus ten percent (10%). As Section 47-1512, Idaho Code, requires bonding for actual costs of reclamation, any bonds calculated prior to 1997 are out of date and do not represent actual costs of reclamation. It is suggested that this section be deleted.
- Section 47-1512, Idaho Code, was changed in 2016 to increase the maximum reclamation bond amount per acre from \$2,500 to \$15,000 per acre, but IDAPA 20.03.02 still lists the \$2,500 maximum amount. This change will update the rules to align with statute.
- Requiring potential and current operators within the 100-year floodplain to illustrate the floodplain and describe the measures that will be implemented to keep surface waters from entering mining operations.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 5, 2018, Idaho Administrative Bulletin, [Vol. 18-9, pages 297-318](#).

**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 Todd Drage, Regulatory Minerals Program Manager, at (208) 334-0247.

Dated this 16th day of October, 2018.



Todd Drage  
Regulatory Minerals Program Manager  
Resource Protection and Assistance Bureau  
Idaho Department of Lands

300 N. 6th Street, Suite 103  
Boise, ID 83720-0050  
Phone: (208) 334-0247  
Fax: (208) 769-3698

**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 Title 47 Chapter 15, including Section 47-1505, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**PUBLIC HEARING**  
**Thursday, September 20, 2018 – 4:00 p.m.**

**Idaho State Capitol**  
**Room WW55**  
**700 West Jefferson Street**  
**Boise, ID 83702**

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

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

The Idaho Department of Lands is developing a web-based portal and information management system that will allow for submittal of applications and other documents electronically. Currently, IDAPA 20.03.02 requires paper copies and, in some instances, certified mail submittals. The proposed changes remove the requirement for paper submittals, which will allow permittees and operators to submit documents by paper copy or in electronic format.

Additional changes include the following:

- Updates to Section 005-Office Hours – Mailing Address and Street Address.
- Addition of new abbreviations.
- IDAPA 20.03.02.120.03 states that only surface mining reclamation bonds obtained after January 1, 1997, may be addressed at actual costs plus ten percent (10%). As Section 47-1512, Idaho Code, requires bonding for actual costs of reclamation, any bonds calculated prior to 1997 are out of date and do not represent actual costs of reclamation. It is suggested that this section be deleted.
- Section 47-1512, Idaho Code, was changed in 2016 to increase the maximum reclamation bond amount per acre from \$2,500 to \$15,000 per acre, but IDAPA 20.03.02 still lists the \$2,500 maximum amount. This change will update the rules to align with statute.
- Requiring potential and current operators within the 100-year floodplain to illustrate the floodplain and describe the measures that will be implemented to keep surface waters from entering mining operations.

**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:

No fiscal impact to the state general fund is anticipated as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was conducted pursuant to Section 67-5220(1), Idaho Code. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin **Volume 18-6, Page 82**.

**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:

No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Todd Drage, Regulatory Minerals Program Manager, at (208) 334-0247.

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 26, 2018.

Dated this 5th day of September, 2018.

**LINK: LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 20-0302-1801**

**005. ~~INCLUSIVE GENDER.~~**

~~For all sections and subsections of these rules, the terms and references used in the masculine sense include the feminine sense and vice versa, as appropriate. (3-30-06)~~

**~~006. OFFICE – OFFICE HOURS – MAILING ADDRESS AND – STREET ADDRESS – WEB ADDRESS.~~**

The principal place of business of the Department of Lands is in Boise, Idaho. The office is located at 300 North 6th Street, Suite 103, Boise, Idaho and is open from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone of the office is (208) 334-0200 and the fax number is (208) 334-~~2339~~3698. The Department's web address is located at [www.idl.idaho.gov](http://www.idl.idaho.gov). (3-30-06)( )

**~~007. PUBLIC RECORDS ACT COMPLIANCE.~~**

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records. (3-30-06)

**~~008. -- 009. (RESERVED)~~**

**010. DEFINITIONS.**

**01. Affected Land.** The land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds, and other areas disturbed at the surface mining operation site. (11-1-89)

- 02. Approximate Previous Contour.** A contour that is reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. (11-1-89)
- 03. Best Management Practices (~~“BMPs”~~).** Practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan, as described in IDAPA 58.01.02, “Water Quality Standards and Wastewater Treatment Requirements,” which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals. (~~3-30-06~~)(    )
- 04. Board.** The State Board of Land Commissioners or any Department, commission, or agency that may lawfully succeed to the powers and duties of such Board. (11-1-89)
- 05. Chapter.** The Idaho Surface Mining Act, Title 47, Chapter 15, Idaho Code. (3-30-06)
- 06. Cyanidation.** The method of extracting target precious metals from ores by treatment with cyanide solution, which is the primary leaching agent for extraction. (3-30-06)
- 07. Cyanidation Facility.** That portion of a new ore processing facility, or a material modification or a material expansion of that portion of an existing ore processing facility, that utilizes cyanidation and is intended to contain, treat, or dispose of cyanide containing materials including spent ore, tailings, and process water. (3-30-06)
- 08. Department.** The Idaho Department of Lands. Its business address is 300 North 6th Street, Suite 103, Boise, Idaho 83720. (7-1-88)
- 09. DEQ.** The Department of Environmental Quality. (11-1-89)
- 10. Director.** The head of the Department of Lands or such officer as may lawfully succeed to the powers and duties of said director. It shall also mean such representative as may be designated by the director. (11-1-89)
- 11. Discharge.** With regard to cyanidation facilities, when used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. (3-30-06)
- 12. Exploration Drill Holes.** Holes drilled from the surface to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)
- 13. Exploration Operations.** Activities performed on the surface of lands to locate mineral bodies and to determine the mineability and merchantability thereof. These activities include, but are not limited to, construction of roads, trenches, and exploration drill holes. (11-1-89)
- 14. Exploration Roads.** Roads constructed to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)
- 15. Exploration Trenches.** Trenches constructed to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)
- 16. Final Order of the Board.** A written notice of rejection, the order of a hearing officer at the conclusion of a hearing, or any other order of the Board where additional administrative remedies are not available. (11-1-89)
- 17. Groundwater.** Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (3-30-06)
- 18. Hearing Officer.** That person selected by the Board to hear proceedings under Section 47-1513, Idaho Code. It also means that person selected by the director to hear proceedings initiated under Section 110 or Section 160 of these rules. (11-1-89)

**19. Land Application.** With regard to cyanidation facilities, a process or activity involving application of process water, wastewater, surface water, or semi-liquid material to the land for the purpose of disposal, pollutant removal, or groundwater recharge. (3-30-06)

**20. Material Change.** (3-30-06)

**a.** For surface mining, a change which deviates from the approved reclamation plan and causes one (1) of the following to occur: (3-30-06)

i. Results in a substantial adverse affect to the geotechnical stability of overburden disposal areas, topsoil, stockpiles, roads, embankments, tailings facilities or pit walls; (7-1-98)

ii. Substantially modifies surface water management, not to include routine implementation and maintenance of BMPs; (3-30-06)

iii. Exceeds the permitted acreage; or (7-1-98)

iv. Increases overall estimated reclamation costs by more than fifteen percent (15%). (7-1-98)

**b.** For cyanidation facilities, a change which causes one (1) of the following to occur: (3-30-06)

i. A substantial adverse effect to the geotechnical stability of the cyanidation facilities; (3-30-06)

ii. The need for a substantial change in the water management plan. (3-30-06)

iii. Increases in overall estimated permanent closure costs by more than fifteen percent (15%). (3-30-06)

**21. Material Modification or Material Expansion.** With regard to cyanidation facilities: (3-30-06)

**a.** The addition of a new beneficiation process, or a significant change in the capacity of an existing beneficiation process, which was not identified in the original application and that significantly increases the potential to degrade the waters of the state. Such process could include, but is not limited to, heap leaching and process components for milling; or (3-30-06)

**b.** A significant change in the location of a proposed process component or site condition which was not adequately described in the original application; or (3-30-06)

**c.** A change in the beneficiation process that alters the characteristics of the waste stream in a way that significantly increases the potential to degrade the waters of the state. (3-30-06)

**d.** For a cyanidation facility with an existing permit that did not actively add cyanide after January 1, 2005, reclamation and closure related activities shall not be considered to be material modifications or material expansions of the cyanidation facility. (3-30-06)

**22. Material Stabilization.** Managing or treating spent ore, tailings, other solids and/or sludges resulting from the cyanidation process in such a manner to minimize waters or all other applied solutions from migrating through the material and transporting pollutants associated with the cyanidation facility ensuring that all discharges comply with all applicable standards and criteria. (3-30-06)

**23. Mine Panel.** That area designated by the operator as a panel of a surface mine on the map submitted pursuant to Section 47-1506, Idaho Code. (11-1-89)

**24. Mined Area.** Surface of land from which overburden or minerals have been removed other than by drilling of exploration drill holes. (11-1-89)

- 25. Mineral.** Coal, clay, stone, sand, gravel, metalliferous and non-metalliferous types of ores, and any other similar, solid material or substance of commercial value to be excavated from natural deposits on or in the earth. (11-1-89)
- 26. Mineral Stockpile.** Mineral extracted during surface mining operations and retained at the surface mine for future rather than immediate use. (11-1-89)
- 27. Motorized Earth-Moving Equipment.** Backhoes, bulldozers, front-loaders, trenchers, core drills, and other similar equipment. (11-1-89)
- 28. Neutralization.** Treatment of process waters such that discharge or final disposal of those waters does not, or shall not violate all applicable standards and criteria. (3-30-06)
- 29. Operator.** Any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial, including but not limited to every public or governmental agency engaged in surface mining or exploration operations, or engaged in the operation and/or permanent closure of a cyanidation facility, whether individually, jointly, or through subsidiaries, agents, employees, or contractors and shall mean every governmental agency owning or controlling the use of any surface mine when the mineral extracted is to be used by or for the benefit of such agency. It shall not include any such governmental agency with respect to those surface mining or exploration operations as to which it grants mineral leases or prospecting permits or similar contracts, but nothing herein shall relieve the operator acting pursuant to a mineral lease, prospecting permit or similar contract from the terms of the chapter. (3-30-06)
- 30. Overburden.** Material extracted by an operator which is not a part of the material ultimately removed from a surface mine and marketed by an operator, exclusive of mineral stockpiles. (11-1-89)
- 31. Overburden Disposal Area.** Land surface upon which overburden is piled or planned to be piled. (11-1-89)
- 32. Peak.** A projecting point of overburden. (11-1-89)
- 33. Permanent Closure.** Those activities which result in neutralization, material stabilization, and decontamination of cyanidation facilities and/or facilities' final reclamation. (3-30-06)
- 34. Permanent Closure Plan.** A description of the procedures, methods, and schedule that will be implemented to meet the intent and purpose of the chapter in treating and disposing of cyanide-containing materials including spent ore, tailings, and process water and in controlling and monitoring discharges and potential discharges for a reasonable period of time based on site specific conditions. (3-30-06)
- 35. Permit.** When used without qualification, any written authorization by the Department of Environmental Quality, issued pursuant to the application, public participation, and appeal procedures in IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," governing the location, operation and maintenance, monitoring, seasonal and permanent closure, discharge response, and design and construction of a new cyanidation facility or a material expansion or material modification to a cyanidation facility. (3-30-06)
- 36. Pilot Facility.** (3-30-06)
- a.** A testing cyanidation facility that is constructed primarily to obtain data on the effectiveness of the beneficiation process to determine: (3-30-06)
- i.** The feasibility of metals recovery from an ore; or (3-30-06)
- ii.** The optimum operating conditions for a predetermined process to extract values from an ore. (3-30-06)
- b.** A pilot or testing cyanidation facility operated for one (1) year for a single test or two (2) years for multiple tests, during which time no more than ten thousand (10,000) tons of ore are evaluated for the testing

process(es), unless the applicant can demonstrate that a greater amount is necessary for a specific purpose in the testing process. (3-30-06)

**37. Pit.** An excavation created by the extraction of minerals or overburden during surface mining operations. (11-1-89)

**38. Pollutant.** Chemicals, chemical waste, process water, biological materials, radioactive materials, or other materials which, when discharged cause or contribute adverse effects to any beneficial use, or for any other reason, may impact the surface or ground waters of the state. (3-30-06)

**39. Post Closure.** The period after completion of permanent closure when the operator is monitoring the effectiveness of the permanent closure activities. Post closure shall last a minimum of twelve (12) months, but may extend until the cyanidation facility is shown to be in compliance with the stated permanent closure objectives and the requirements of the chapter. (3-30-06)

**40. Process Waters.** Any liquids which are intentionally or unintentionally introduced into any portion of the cyanidation process. These liquids may contain cyanide or other minerals, meteoric water, ground or surface water, elements and compounds added to the process solutions for leaching or the general beneficiation of ore, or hazardous materials that result from the combination of these materials. (3-30-06)

**41. Reclamation.** The process of restoring an area affected by a surface mining operation to its original or another beneficial use, considering previous uses, possible future uses, and surrounding topography. The objective is to re-establish a diverse, self-perpetuating plant community, and to minimize erosion, remove hazards, and maintain water quality. (11-1-89)

**42. Revegetation.** The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by surface mining operations. (11-1-89)

**43. Ridge.** A lengthened elevation of overburden. (11-1-89)

**44. Road.** A way constructed on a surface mine for the passage of vehicles, including the bed, slopes and shoulders thereof. (11-1-89)

**45. Small Cyanidation Processing Facility.** A cyanidation facility which chemically processes less than thirty-six thousand five hundred (36,500) tons of ore per year and no more than one hundred twenty thousand (120,000) tons of ore for the life of the project at any one (1) permitted cyanidation facility. No person or operator may concurrently hold more than one (1) small cyanidation processing facility permit, if located within ten (10) miles of each other. (3-30-06)

**46. Surface Mine.** An area where minerals are extracted by removing the overburden lying above and adjacent to natural deposits thereof and mining directly from the natural deposits thereby exposed. (11-1-89)

**47. Surface Mining Operations.** The activities performed on a surface mine in the extraction of minerals from the ground, including the excavation of pits, removal of minerals, disposal of overburden, and the construction of haulage roads, exclusive of exploration operations, except that any exploration operations which, exclusive of exploration roads, 1) result during a period of twelve (12) consecutive months in more than five (5) contiguous acres of newly affected land, or 2) which, exclusive of exploration roads, results during a period of twelve (12) consecutive months in newly affected lands consisting of more than ten (10) noncontiguous acres, if such affected land constitutes more than fifteen percent (15%) of the total area of any circular tract which includes such affected land, shall be deemed to be a surface mining operation for the purposes of the act. (11-1-89)

**48. Surface Waters.** The surface waters of the state of Idaho. (11-1-89)

**49. Tailings Pond.** An area on a surface mine enclosed by a man-made or natural dam onto which has been discharged the waste material resulting from the primary concentration of minerals in ore excavated from a surface mine. (11-1-89)

50. **Treatment.** With regard to cyanidation facilities, any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of a waste for the purpose of disposal. (3-30-06)

51. **Water Balance.** An inventory and accounting process capable of being reconciled that integrates all potential sources of water that are entrained in the cyanidation facility or may enter into or exit from the cyanidation facility. The inventory must include the water holding capacity of specific structures within the facility that contain process water. The water balance is used to ensure that all process water and other pollutants can be contained as engineered and designed within a factor of safety as determined in the permanent closure plan. (3-30-06)

52. **Water Management Plan.** A document that describes the results of the water balance and the methods that will be used to ensure that pollutants are not discharged from a cyanidation facility into waters of the state, unless permitted or otherwise approved by the DEQ. (3-30-06)

53. **Waters of the State.** All the accumulations of water, surface and underground, natural and artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state. These waters shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters of the state. (3-30-06)

54. **Weak Acid Dissociable (~~WAD~~) Cyanide.** The cyanide concentration as determined by Method C, Weak Acid Dissociable Cyanide, D2036, the American Society of Testing Materials Book of Standards, "Standard Methods for the Examination of Water and Wastewater," Method 4500 CN<sup>-</sup> I, or other methods accepted by the scientific community and deemed appropriate by the DEQ. ~~(3-30-06)~~( )

**011. ABBREVIATIONS.**

01. **BMP. Best Management Practices.** ( )

02. **DEQ. Department of Environmental Quality.** ( )

03. **U.S.C. United States Code.** ( )

04. **WAD. Weak Acid Dissociable.** ( )

01~~1~~2. -- 049. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**060. EXPLORATION OPERATIONS AND REQUIRED RECLAMATION.**

01. **Diligence.** All reclamation activities required to be conducted on exploration sites shall be performed in a good, workmanlike manner with all reasonable diligence, and as to a given exploration drill hole, road, or trench, within one (1) year after abandonment thereof. (11-1-89)

02. **When Exploration Is Surface Mining.** Exploration operations may under some circumstances constitute surface mining operations (see Subsection 010.46). (3-30-06)

03. **Notification.** Any operator desiring to conduct exploration using motorized earth-moving equipment to locate minerals for immediate or ultimate sale shall notify the Department *by certified mail* within seven (7) days after beginning exploration operations. ~~(3-30-06)~~( )

04. **Contents of Notification.** The notification shall include: (3-30-06)

a. The name and address of the operator; (11-1-89)

- b. The legal description of the exploration and its starting and estimated completion date; and (3-30-06)
- c. The anticipated size of the exploration and the general method of operation. (3-30-06)
- 05. Confidentiality.** Any such notification shall be treated as confidential in accord with Section 180. (3-30-06)
- 06. Exploration Reclamation (Less Than Two Acres).** Every operator who conducts exploration affecting less than two (2) acres shall: (3-30-06)
- a. Wherever possible, contour the affected lands to their approximate previous contour; and (11-1-89)
- b. Conduct revegetation activities in accordance with Subsection 140.11. Unless otherwise required by a federal agency, one (1) pit or trench on a federal mining claim showing discovery, may be left open pending verification by federal mining examiners. (3-30-06)
- c. Abandoned exploration drill holes shall be plugged, or otherwise left so as to eliminate hazards to humans and animals. Pits or trenches on mining claims showing discovery may be left open pending verification by federal mining examiners but shall not create a hazard to humans or animals. Such abandoned pits and trenches shall be reclaimed within one (1) year of verification. (3-30-06)
- d. If water runoff from exploration causes siltation of surface waters in amounts more than normally results from runoff, the operator shall reclaim affected lands and adjoining lands under his control as is necessary to re-establish runoff conditions that existed prior to starting exploration, or as is necessary to meet state water quality standards, whichever is the lesser standard. It shall be presumed that state water quality standards will be the applicable standard unless baseline data is provided to rebut the presumption. (3-30-06)
- 07. Exploration Reclamation (More Than Two Acres).** Reclamation of lands where exploration has affected more than two (2) acres shall be completed as set forth in Subsection 060.06 and the following additional requirements: (3-30-06)
- a. Abandoned exploration roads shall be cross-ditched as necessary to minimize erosion. The director may request in writing, or may be petitioned in writing, that a given road or road segment be left for a specific purpose and not be cross-ditched or revegetated. If the director approves the petition, the operator cannot thereafter be required to conduct reclamation activities with respect to that given road or road segment. (3-30-06)
- b. Ridges of overburden shall be leveled so as to have a minimum width of ten (10) feet at the top. (11-1-89)
- c. Peaks of overburden shall be leveled so as to have a minimum width of fifteen (15) feet at the top. (11-1-89)
- d. Overburden piles shall be reasonably prepared to control erosion. (11-1-89)
- e. Abandoned lands affected by exploration shall be top-dressed to the extent that such overburden is reasonably available from any pit or other excavation created by the exploration, with that type of overburden that is conducive to the control of erosion or the growth of vegetation that the operator elects to plant thereon. (3-30-06)
- f. Any water containment structure created in connection with exploration, shall be reasonably prepared so as not to constitute a hazard to humans or animals. (3-30-06)
- 08. Additional Reclamation.** The operator and the director may agree, in writing, to complete additional reclamation beyond the requirements established in the chapter and these rules. (3-30-06)
- 061. -- 068. (RESERVED)**



**069. APPLICATION PROCEDURE AND REQUIREMENTS FOR QUARRIES, DECORATIVE STONE, BUILDING STONE, AND AGGREGATE MATERIALS INCLUDING SAND, GRAVEL AND CRUSHED ROCK.**

**01. Approval Required.** Approval of a reclamation plan by the Department is required even if approval of such plan has been or will be obtained from a federal agency. (3-30-06)

**02. No Operator Shall Conduct Surface Mining Operations.** No operator shall conduct surface mining operations on any lands in the state until the surface mining reclamation plan has been approved by the director, and the operator has filed a bond that meets the requirements of the chapter and these rules. (3-30-06)

**03. Application Package.** The operator must submit ~~five (5)~~ a complete ~~copies of the~~ application package, for each separate surface mine or mine panel, before the reclamation plan will be approved. Separate surface mines are individual, physically disconnected operations. A complete application package consists of:

~~(3-30-06)~~ ( )

**a.** An application provided by the director; (7-1-98)

**b.** A map or maps of the proposed mining operation which includes the information required under Subsection 069.03; (7-1-98)

**c.** A reclamation plan, in map and narrative form, which includes the information required under Subsection 069.04; and (3-30-06)

**d.** An out-of-state operator shall designate an in-state agent authorized to act on behalf of the operator. In case of an emergency that requires an action or actions to prevent environmental damage, both the operator and the authorized agent will be notified as well. (3-30-06)

**04. Map Requirements.** A vicinity map shall be prepared on standard United States Geological Survey ("USGS") seven and one-half (7.5) minute quadrangle maps or equivalent. A map of the proposed surface mining operation site shall be of sufficient scale to show: (3-30-06)

**a.** The location of existing roads, access, and main haul roads to be constructed or reconstructed in conjunction with the surface mining operation and the approximate dates for construction, reconstruction, and abandonment; (3-30-06)

**b.** The approximate location and names, if known, of drainages, streams, creeks, or water bodies within one thousand (1,000) feet of the surface mining operation; (3-30-06)

**c.** The approximate boundaries of the lands to be utilized in the surface mining operations, including a legal description to the quarter-quarter section; (3-30-06)

**d.** The approximate boundaries and acreage of the lands that will become affected land as a result of the surface mining operation during the first year of operations; (3-30-06)

**e.** The currently planned storage locations of fuel, equipment maintenance products, wastes, and chemicals that will be utilized in the surface mining operation; (3-30-06)

**f.** The currently planned location and configuration of pits, overburden piles, crusher reject materials, topsoil storage, wash plant ponds and sediment ponds that will be utilized; (3-30-06)

**g.** Scaled cross-sections by length and height showing surface profiles prior to mining; and (7-1-98)

**h.** A surface and mineral control or ownership map of appropriate scale for boundary identification; (7-1-98)

**05. Reclamation Plan Requirements.** Reclamation plans must be submitted in map and narrative form and include the following: (3-30-06)

**a.** Where surface waters are likely to be impacted and when requested by the director, documents identifying and assessing foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters and the BMPs the operator will use to control such impacts during surface mining and reclamation; (3-30-06)

**b.** Scaled cross-sections by length and height, showing planned surface profiles and slopes after reclamation; (3-30-06)

**c.** Roads to be reclaimed; (7-1-98)

**d.** A plan for revegetation of affected lands including soil types, slopes, precipitation, seed rates, species, handling of topsoil or other growth medium, time of planting, method of planting and, if necessary, fertilizer and mulching rates; (7-1-98)

**e.** The planned reclamation of wash plant or sediment ponds; (3-30-06)

**f.** A drainage control map which identifies the location of BMPs that will be implemented to control erosion and such nonpoint source water quality impacts during surface mining and reclamation activities; (3-30-06)

**g.** The location of any current 100-year floodplain in relation to the mining facilities if the floodplain is within one hundred (100) feet of the facilities, and the BMPs to be implemented that will keep surface waters from entering any pits and potentially changing course. ( )

**070. APPLICATION PROCEDURE AND REQUIREMENTS FOR OTHER SURFACE MINING OPERATIONS INCLUDING HARDROCK AND PHOSPHATE MINING.**

**01. Reclamation Plan Approval Required.** Approval of a reclamation plan by the Department is required even if approval of such plan has been or will be obtained from a federal agency. No operator shall conduct surface mining operations on any lands in the state until the reclamation plan has been approved by the director, and the operator has filed the required performance bond. (3-30-06)

**02. Application Package.** The operator must submit ~~five (5)~~ a complete ~~copies of the~~ application package for each separate surface mine or mine panel before the reclamation plan will be approved. Separate surface mines are individual, physically disconnected operations. A complete application package consists of: ~~(3-30-06)~~ ( )

**a.** All items and information required under Section 069 of these rules; (3-30-06)

**b.** Any additional information required by Subsection 070.04; and (3-30-06)

**c.** An operating plan, if required by Section 47-1506(b), Idaho Code, prepared in accordance with Subsections 070.05 and 070.06 of these rules. (3-30-06)

**03. Map Requirements.** Maps shall be prepared in accordance with Subsection 069.04 of these rules. (3-30-06)

**04. Reclamation Plan Requirements.** Reclamation plans must include all of the information required under Subsection 069.05 and the following additional information: (3-30-06)

**a.** A description of the planned reclamation of tailings or sediment ponds; and (3-30-06)

**b.** An estimate of total reclamation cost to be used in establishing bond amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and other pertinent costs. (11-1-89)

- c.** A description of foreseeable, site-specific impacts from acid rock drainage and the BMPs that will be used to mitigate any impacts from such acid rock drainage. (3-30-06)
- d.** Other pertinent information the Department has determined is necessary to ensure that the operator will comply with the requirements of the chapter. (3-30-06)
- 05. Operating Plan Requirements.** A complete operating plan shall consist of: (3-30-06)
- a.** Maps showing: (3-30-06)
- i.** The location of existing roads and anticipated access and principal haul roads planned to be constructed for surface mining operations. (3-30-06)
- ii.** The boundaries and acreage of the affected lands. (3-30-06)
- iii.** The planned location of pits, mineral stockpiles, overburden piles and tailings ponds for the surface mining operation. (3-30-06)
- iv.** The location and, if known, the names of all streams, creeks, or water bodies within the area of the affected lands. (3-30-06)
- v.** The drainage adjacent to the area where the surface is being utilized by surface mining operations. (7-1-98)
- vi.** The approximate boundaries and acreage of the lands that will become affected during the first year of surface mining operations. (3-30-06)
- b.** Additional information regarding coarse and durable rock armor, if any, is proposed to be used for reclamation of mine facilities. The director may, after considering the type, size, and potential environmental impact of the facility, require the operator to include additional information in the operating plan. Such information may include, but is not limited to, one (1) or more of the following: (3-30-06)
- i.** A description of the quantities, size, geologic characteristics, and durability of the materials to be used for final reclamation and armoring. (3-30-06)
- ii.** A description of how the coarse and durable materials will be handled and/or stockpiled, including a schedule for such activities that will ensure adequate quantities are available during reclamation. (3-30-06)
- c.** The director may, after considering the type, size, and potential environmental impact of the facility, require the operator to prepare a geotechnical analysis and report, signed by an engineer registered in the state of Idaho, which shows that (1) any waste rock or overburden stockpiles, (2) any pit walls proposed to be more than one hundred (100) feet high, or (3) any pit walls where geologic conditions could lead to failure of the wall regardless of the height will be constructed in a manner that is consistent with industry standards to minimize the potential for failure. If failure of these structures can reasonably be expected to impact adjacent surface or ground waters or adjacent private or state-owned lands, the analysis may be required to consider the long-term stability of these structures, the potential for groundwater accumulation, and the expected seismic accelerations at the site. (3-30-06)

**071. APPLICATION PROCEDURE AND REQUIREMENTS FOR PERMANENT CLOSURE OF CYANIDATION FACILITIES.**

- 01. Permanent Closure Plan Approval Required.** No operator shall construct or operate a new cyanidation facility or materially modify or materially expand an existing cyanidation facility prior to obtaining a permit, approval from the director and before the operator has filed a bond, as required by these rules. (3-30-06)
- 02. Permanent Closure Plan Requirements.** A permanent closure plan shall: (3-30-06)
- a.** Identify the current owner of the cyanidation facility and the party responsible for the permanent

- closure and the long-term care and maintenance of the cyanidation facility; (3-30-06)
- b.** Include a timeline showing: (3-30-06)
    - i.** The schedule to complete permanent closure activities, including neutralization of process waters and material stabilization, and the time period for which the operator shall be responsible for post-closure activities; and (3-30-06)
    - ii.** If the operator plans to complete construction, operation, and/or permanent closure of the cyanidation facility in phases, the schedule to begin each phase of construction, operation, and/or permanent closure activities and any associated post-closure activities. (3-30-06)
  - c.** Provide the objectives, methods, and procedures that will achieve neutralization of process waters and material stabilization during the closure period and through post-closure; (3-30-06)
  - d.** Provide a water management plan from the time the cyanidation facility is in permanent closure through the defined post-closure period. The plan shall be prepared in accordance with IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," administered by the DEQ, as required to meet the objectives of the permanent closure plan. (3-30-06)
  - e.** Include the schematic drawings for all BMPs that will be used during the closure period, through the defined post-closure period, and a description of how the BMPs support the water management plan, and an explanation of the water conveyance systems that are planned for the cyanidation facility. (3-30-06)
  - f.** Provide proposed post-construction topographic maps and scaled cross-sections showing the configuration of the final heap or tailing facility, including the final cap and cover designs and the plan for long-term operation and maintenance of the cap. Caps and covers used as source control measures for cyanidation facilities must be designed to minimize the interaction of meteoric waters, surface waters, and groundwaters with wastes containing pollutants that are likely to be mobilized and discharged to waters of the state. Prior to approval of a permanent closure plan, engineering designs and specifications for caps and covers must be signed and stamped by a professional engineer registered in the state of Idaho; (3-30-06)
  - g.** Include monitoring plans for surface and ground water during closure and post-closure periods, adequate to demonstrate water quality trends and to ensure compliance with the stated permanent closure objectives and the requirements of the chapter; (3-30-06)
  - h.** Provide an assessment of the potential impacts to soils, vegetation, and surface and ground waters for all areas to be used for the land application system and provide a mitigation plan, as appropriate. (3-30-06)
  - i.** Provide information on how the operator will comply with the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; Idaho Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code; Idaho Solid Waste Management Act, Chapter 74, Title 39, Idaho Code; and appropriate state rules, during operation and permanent closure; (3-30-06)
  - j.** Provide sufficient detail to allow the operator to prepare an estimate of the reasonable costs to implement the permanent closure plan; (3-30-06)
  - k.** Provide an estimate of the reasonable estimated costs to complete the permanent closure activities specified in the permanent closure plan in the event the operator fails to complete those activities. The estimate shall: (3-30-06)
    - i.** Identify the incremental costs of attaining critical phases of the permanent closure plan and a proposed bond release schedule; (3-30-06)
    - ii.** Assume that permanent closure activities will be completed by a third party whose services are contracted for by the Board as a result of a bond forfeiture under Section 47-1513, Idaho Code, and include: (3-30-06)

(1) All direct and indirect costs expected to be incurred by a third party including, but not limited to, mobilization, labor, materials, equipment, engineering, and demobilization costs; and (3-30-06)

(2) An amount acceptable to the Department but not to exceed ten percent (10%) of the total estimated closure costs, which is intended to cover costs the Department will incur in association with contract administration. (3-30-06)

**l.** If the proposal is to complete cyanidation facility construction, operation, and/or permanent closure activities in phases: (3-30-06)

**i.** Describe how these activities will be phased and how, after the first phase of activities, each subsequent phase will be distinguished from the previous phase or phases; and (3-30-06)

**ii.** Describe how any required post-closure activities will be addressed during and after each subsequent phase has begun. (3-30-06)

**m.** Provide any additional information that may be required by the Department to ensure compliance with the objectives of the permanent closure plan and the requirements of the chapter. (3-30-06)

**03. Preapplication Conference.** Prospective applicants are encouraged to meet with the Department well in advance of preparing and submitting an application package to discuss the anticipated application requirements and application procedures, and to arrange for a visit or visits to the proposed location of the cyanidation facility. The preapplication conference may trigger a period of collaborative effort between the Department, the DEQ, and the applicant in developing checklists to be used by the agencies in reviewing an application for completion, accuracy, and protectiveness. (3-30-06)

**04. Application Package for Permanent Closure.** An application and its contents submitted to the Department shall be used to determine whether an applicant can complete all permanent closure activities in conformance with all applicable state laws. An application must provide information in sufficient detail to allow the director to make necessary application review decisions regarding cyanidation facility closure and protection of public health, safety, and welfare, in accordance with the chapter. ~~Five (5) copies of the A complete~~ application package must be submitted to the Department. A complete application package for an operator proposing to use cyanidation shall consist of: (3-30-06)( )

**a.** A Department application form completed, signed, and dated by the applicant. This form shall contain the following information: (3-30-06)

**i.** Name, location, and mailing address of the cyanidation facility; (3-30-06)

**ii.** Name, mailing address, and phone number of the operator. An out-of-state operator shall designate an in-state agent authorized to act on his behalf. In case of an emergency that requires actions to prevent environmental damage, both the operator and his agent will be notified; (3-30-06)

**iii.** Land ownership status (federal, state, private or public); (3-30-06)

**iv.** The legal description to the quarter-quarter section of the location of the proposed cyanidation facility; and (3-30-06)

**v.** The legal structure (corporation, partnership, etc.) and primary place of business of the operator. (3-30-06)

**b.** Evidence that the applicant is authorized by the Secretary of State to conduct business in the state of Idaho; (3-30-06)

**c.** A permanent closure plan as prescribed in Subsection 071.02; (3-30-06)

- d. The DEQ application and supporting materials; (3-30-06)
- e. The five thousand dollar (\$5,000) application processing and review fee, as defined in Subsection 071.05.a. (3-30-06)
- 05. Application Fee.** The application fee shall consist of two (2) parts: (3-30-06)
- a. Processing and review fee. (3-30-06)
- i. The applicant shall pay a nonrefundable five thousand dollar (\$5,000) fee upon submission of an application. Within thirty (30) days of receiving an application and this fee, the director shall provide a detailed cost estimate to the operator which includes a description of the scope of the Department's review; the assumptions on which the Department's estimate is based; and an itemized accounting of the anticipated number of labor hours, hourly labor rates, travel expenses and any other direct expenses the Department expects to incur, and indirect expenses equal to ten percent (10%) of the Department's estimated direct costs, as required to satisfy its statutory obligation pursuant to the chapter. (3-30-06)
- ii. If the Department's estimate is greater than five thousand dollars (\$5,000), the applicant may agree to pay a fee equal to the difference between five thousand dollars (\$5,000) and the Department's estimate, or may commence negotiations with the Department to establish a reasonable fee. (3-30-06)
- iii. If, within twenty (20) days from issuance of the Department's estimate, the Department and applicant cannot agree on a reasonable application processing and review fee, the applicant may appeal to the Board. The Board shall: (3-30-06)
- (1) Review the Department's estimate; (3-30-06)
- (2) Conduct a hearing where the applicant is allowed to give testimony to the Board concerning the Department's estimate; and (3-30-06)
- (3) Establish the amount of the application review and processing fee. (3-30-06)
- iv. If the fee is more than five thousand dollars (\$5,000), the applicant shall pay the balance of the fee within fifteen (15) days of the Board's decision or withdraw the application. (3-30-06)
- v. Nothing in this section shall extend the time in which the Board must act on a plan submitted. (3-30-06)
- b. Permanent closure cost estimate verification fee. (3-30-06)
- i. Pursuant to Sections 47-1506(g) and 47-1513(j), Idaho Code, the Department may employ a qualified independent party, acceptable to the operator and the Board, to verify the accuracy of the permanent closure cost estimate. (3-30-06)
- ii. The applicant shall be solely responsible for paying the Department's cost to employ a qualified independent party to verify the accuracy of the permanent closure cost estimate. The applicant may participate in the Department's processes for identifying qualified parties and selecting a party to perform this work. (3-30-06)
- iii. If a federal agency has responsibility to establish the bond amount for permanent closure of a cyanidation facility on federal land, the Department may employ the firm retained by the federal agency to verify the accuracy of the permanent closure cost estimate. If the director chooses not to employ the firm retained by the federal agency, he shall provide a written justification explaining why the firm was not employed. (3-30-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

120. PERFORMANCE BOND REQUIREMENTS FOR SURFACE MINING.

**01. Submittal of Bond Before Surface Mining.** Prior to beginning any surface mining on a mine panel covered by a plan, an operator shall submit to the director, on a surface mining reclamation bond form, a performance bond meeting the requirements of this rule. The amount shall be the amount necessary to pay the estimated reasonable costs of reclamation required under the reclamation plan for each acre of land to be affected during the first year of operation, plus ten (10%) percent. No performance bond shall exceed ~~two~~ **fifteen** thousand ~~five hundred~~ **dollars** (\$~~2,500~~**15,000**) for a given acre of affected land unless: (3-30-06)(    )

**a.** The Board has determined that such performance bond is necessary to meet the requirements of Sections 47-1506, 47-1509, 47-1510, and 47-1511, Idaho Code. (3-30-06)

**b.** The Board has delivered to the operator, in writing, a notice setting forth the reasons it believes such bond is necessary. (7-1-98)

**c.** The Board has conducted a hearing where the operator is allowed to give testimony to the Board concerning the amount of the proposed bond, as provided by Section 47-1512(c), Idaho Code. This requirement for a hearing may be waived, in writing, by the operator. (3-30-06)

**02. Mining Operation Conducted by Public or Government.** Notwithstanding any other provision of law to the contrary, the bonding provisions of the chapter and these rules shall not apply to any surface mining operations conducted by a public or governmental agency for maintenance, repair, or construction of a public highway. (3-30-06)

**03.** ~~Limits. Only surface mining reclamation bonds obtained after January 1, 1997, may be assessed at actual costs plus ten percent (10%), not to exceed two thousand five hundred dollars (\$2,500) per acre except as provided by the chapter, or if a material change as defined by Subsection 010.20 of these rules. Any revision to the amount, term and conditions of a performance bond due to a material change shall apply only to the affected lands covered by the material change.~~ (3-30-06)

~~04.~~ **Annual Bond Review.** At the beginning of each calendar year, the operator shall notify the director of any increase in the acreage of affected land which will result from planned surface mining activity within the next twelve (12) months. A commensurate increase in the bond will be required for an increase in affected acreage. Any additional bond required shall be submitted on the appropriate bond form within ninety (90) days of operator's receipt of notice from the Department that an additional bond amount is required. In no event shall surface mining operations be conducted that would affect additional acreage until the appropriate bond form and bond has been with the Department. Acreage on which reclamation is complete shall be reported in accordance with Subsection 120.07 and after release of this acreage from the plan by the director, the bond may be reduced by the amount appropriate to reflect the completed reclamation. (3-30-06)

~~054.~~ **Bond Provided to the Federal Government.** Any bond provided to the federal government that also meets the requirements of Section 120 shall be sufficient for the purposes of these rules. (3-30-06)

~~065.~~ **Bond Reduction.** (11-1-89)

**a.** Upon finding that any land bonded under a reclamation plan will not be affected by mining, the operator shall notify the director. The amount of the bond shall be reduced by the amount being held to reclaim those lands. (11-1-89)

**b.** Any request for bond reduction shall be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. (11-1-89)

~~076.~~ **Bond Release.** Upon completion of the reclamation specified in the plan, the operator shall notify the director of his desire to secure release from bonding. When the director has verified that the requirements of the reclamation plan have been met as stated in the plan, the bond shall be released. (11-1-89)

**a.** Any request for bond release shall be answered by the director within thirty (30) days of receiving

such request unless weather conditions prevent inspection. (11-1-89)

**b.** If the director finds that a specific portion of the reclamation has been satisfactorily completed, the bond may be reduced to the amount required to complete the remaining reclamation. The following schedule will be used to complete these bond reductions unless the director determines in a specific case that this schedule is not appropriate and specifies a different schedule: (11-1-89)

**i.** Sixty percent (60%) of the bond may be released when the operator completes the required backfilling, regrading, topsoil replacement, and drainage control of the bonded area in accordance with the approved reclamation plan; and (11-1-89)

**ii.** After revegetation activities have been performed by the operator on the regraded lands, according to the approved reclamation plan, the Department may release an additional twenty-five percent (25%) of the bond. (11-1-89)

**c.** The remaining bond shall not be released: (11-1-89)

**i.** As long as the affected lands are contributing suspended solids to surface waters outside the affected area in excess of state water quality standards and in greater quantities than existed prior to the commencement of surface mining operations; (11-1-89)

**ii.** Until final removal of equipment and structures related to the mining activity or until any remaining equipment and structures are brought under an approved reclamation plan and bond by a new operator; and (11-1-89)

**iii.** Until all temporary sediment or erosion control structures have been removed and reclaimed or until such structures are brought under an approved reclamation plan and bond by a new operator. (11-1-89)

**087. Cooperative Agreements.** The director may through private conference, conciliation, and persuasion reach a cooperative agreement with the operator to correct deficiencies in complying with the reclamation plan and thereby postpone action to forfeit the bond and cancel the reclamation plan if all deficiencies are satisfactorily corrected within the time specified by the cooperative agreement. (11-1-89)

**098. Bonding Rate.** An operator may petition the director for a change in the initial bond rate. The director will review the petition, and if satisfied with the information presented, a special bond rate will be set based upon the estimated cost that the director would incur should a forfeiture of bond occur and it became necessary for the director, through contracting with a third party, to complete reclamation to the standards established in the plan. (11-1-89)

**109. Liabilities for Unbonded Reclamation Costs.** An operator who: (11-1-89)

**a.** Departs from his approved reclamation plan by performing an act or omission and such deviation is not subsequently approved; (11-1-89)

**b.** Does not furnish a bond required by these rules; and (11-1-89)

**c.** Is not required to furnish a bond by these rules, but fails to reclaim; is in violation of these rules and may be subject to civil penalty under Section 47-1513(c), Idaho Code. The amount of civil penalty shall be the estimated cost of reasonable reclamation of affected lands as determined by the director. Reasonable reclamation of the site shall be presumed to be in accordance with the standards established in the approved reclamation plan. The amount of the civil penalty shall be in addition to those described in Subsection 160.06. (11-1-89)

**(BREAK IN CONTINUITY OF SECTIONS)**



**140. BEST MANAGEMENT PRACTICES AND RECLAMATION FOR SURFACE MINING OPERATION AND PERMANENT CLOSURE OF CYANIDATION FACILITIES.**

Enumeration of a practice or act in Section 140 shall not be construed to require its specific inclusion in a reclamation or permanent closure plan. (3-30-06)

**01. Nonpoint Source Control.** (3-30-06)

**a.** Appropriate BMPs for nonpoint source controls shall be designed, constructed, and maintained with respect to site-specific surface mining operations or permanent closure activities. Operators shall utilize BMPs designed to achieve state water quality standards and to protect existing beneficial uses of adjacent waters of the state, but shall not be required to do more than is necessary to preserve the condition of runoff from the affected land or the cyanidation facility prior to conducting any exploration, surface mining or cyanidation facility operations. These measures shall be among the first to be taken, if necessary, to protect water quality. State water quality standards, including protection of existing beneficial uses, shall be the standard that must be achieved by BMPs unless the operator can show, and the director determines, that a lesser standard existed in the area to be affected prior to the commencement of the subject surface mining or exploration operations. (3-30-06)

**b.** If the BMPs utilized by the operator do not result in compliance with Subsection 140.01.a., the director shall require the operator to modify or improve such BMPs to meet the controlling, water quality **standards** as set forth in current laws, rules, and regulations. ~~(3-30-06)~~ ( )

**02. Sediment Control.** In addition to proper mining techniques and reclamation measures, the operator shall take necessary steps at the close of each operating season to assure that sediment movement associated with surface runoff over the area is minimized in order to achieve water quality standards, or to preserve the condition of water runoff from the mined area prior to commencement of the subject surface mining or exploration operations, whichever is the lesser standard. Sediment control measures refer to best management practices carried out within and, if necessary, adjacent to the disturbed area and consist of utilization of proper mining and reclamation measures, as well as specific necessary sediment control methods, separately or in combination. Specific sediment control methods may include, but are not limited to: (3-30-06)

- a.** Keeping the disturbed area to a minimum at any given time through progressive reclamation; (3-30-06)
- b.** Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration; (3-30-06)
- c.** Retaining sediment within the disturbed area; (3-30-06)
- d.** Diverting surface runoff around the disturbed area; (3-30-06)
- e.** Routing runoff through the disturbed area using protected channels or pipes so as not to increase sediment load; (3-30-06)
- f.** Use of riprap, straw dikes, check dams, mulches, temporary vegetation, or other measures to reduce overland flow velocities, reduce runoff volume, or retain sediment; and (3-30-06)
- g.** Use of adequate sediment ponds, with or without chemical treatment. (3-30-06)

**03. Clearing and Grubbing.** Clearing and grubbing of land in preparation for mining exposes mineral soil to the erosive effects of moving water. Operators are cautioned to keep such areas as small as possible (preferably no more than one (1) year's mining activity) as the operator shall be required to meet the applicable surface water quality standards on all such areas. Where practicable, trees and slash should be stockpiled for use in seedbed protection and erosion control. (3-30-06)

**04. Overburden/Topsoil.** To aid in the revegetation of affected lands where surface mining operations result in the removal of substantial amounts of overburden including any topsoil, the operator should remove the available topsoil or other growth medium as a separate operation for such area. Unless there are previously affected

lands which are graded and immediately available for placement of the newly removed topsoil or other growth medium, the topsoil or other growth medium shall be stockpiled and protected from erosion and contamination until such areas become available. (3-30-06)

- a.** Overburden/Topsoil Removal. (11-1-89)

  - i. Any overburden/topsoil to be removed should be removed prior to any other mining activity to prevent loss or contamination; (11-1-89)
  - ii. Where overburden/topsoil removal exposes land area to potential erosion, the director, under the reclamation plan, may require BMPs necessary to prevent violation of water quality standards; and (3-30-06)
  - iii. Where the operator can show that an overburden material other than topsoil is conducive to plant growth, or where overburden other than topsoil is the only material reasonably available, such overburden may be allowed as a substitute for or a supplement to the available topsoil. (3-30-06)
- b.** Topsoil Storage. Topsoil stockpiles shall be placed to minimize rehandling and exposure to excessive wind and water erosion. Topsoil stockpiles shall be protected as necessary from erosion by use of temporary vegetation or by other methods which will control erosion, including, but not limited to, silt fences, chemical binders, seeding, and mulching. (11-1-89)
- c.** Overburden Storage. Stockpiled ridges of overburden shall be leveled in such a manner as to have a minimum width of ten (10) feet at the top. Peaks of overburden shall be leveled in such a manner as to have a minimum width of fifteen (15) feet at the top. The overburden piles shall be reasonably prepared to control erosion using best management practices; such activities may include terracing, silt fences, chemical binders, seeding, mulching or slope reduction. (7-1-98)
- d.** Topsoil Placement. Abandoned affected lands shall be covered with topsoil or other type of overburden that is conducive to plant growth, to the extent such materials are readily available, in order to achieve a stable uniform thickness. Excessive compaction of overburden and topsoil is to be avoided. Topsoil redistribution shall be timed so that seeding, or other protective measures, can be readily applied to prevent compaction and erosion. (3-30-06)
- e.** Fill. Backfill and fill materials should be compacted in a manner to ensure stability. (3-30-06)
- 05. Roads.** (11-1-89)

  - a.** Roads shall be constructed to minimize soil erosion, which may require restrictions on the length and grade of the roadbed, surfacing of roads with durable non-toxic material, stabilization of cut and fill slopes, and other techniques designed to control erosion. (3-30-06)
  - b.** All access and haul roads shall be adequately drained. Drainage structures may include, but are not limited to, properly installed ditches, water-bars, cross drains, culverts, and sediment traps. (11-1-89)
  - c.** Culverts that are to be maintained for more than one (1) year shall be designed to pass peak flows from not less than a twenty (20) year, twenty-four (24) hour precipitation event and have a minimum diameter of eighteen (18) inches. (11-1-89)
  - d.** Roads and water control structures shall be maintained at periodic intervals as needed. Water control structures serving to drain roads shall not be blocked or restricted in any manner to impede drainage or significantly alter the intended purpose of the structure. (11-1-89)
  - e.** Roads that will not be recontoured to approximate original contours upon abandonment shall be cross-ditched and revegetated, as necessary, to control erosion. (3-30-06)
  - f.** Roads that are not abandoned and continue to be used under the jurisdiction of a governmental or private landowner, shall comply with the nonpoint source sediment control provisions of Subsection 140.02 until the

successor assumes control. (3-30-06)

**06. Backfilling and Grading.** (11-1-89)

**a.** Every operator who conducts surface mining or cyanidation facility operations which disturb less than two (2) acres shall, where possible, contour the disturbed land to its approximate previous contour. These lands shall be revegetated in accordance with Subsection 140.11. (3-30-06)

**b.** An operator who conducts surface mining or cyanidation facility operations which disturb two (2) acres or more shall reduce all waste piles and depressions to the lowest practicable grade. This grade shall not exceed the angle of repose or maximum slope of natural stability for such waste or generate erosion in which sediment enters waters of the state. (3-30-06)

**c.** Backfill and fill materials should be compacted in a manner to ensure mass and surface stability. (7-1-98)

**d.** After the disturbed area has been graded, slopes will be measured for consistency with the approved reclamation plan or the permanent closure plan. (3-30-06)

**07. Disposal of Waste in Areas Other Than Mine Excavation.** Waste material not used to backfill mined areas shall be transported and placed in a manner designed to stabilize the waste piles and control erosion. (3-30-06)

**a.** The available disposal area should be on a moderately sloped, naturally stable area. The site should be near the head of a drainage to reduce the area of watershed above the fill. (11-1-89)

**b.** All surface water flows within the disposal area shall be diverted and drained using accepted engineering practices such as a system of French drains, to keep water from entering the waste pile. These measures shall be implemented in accordance with standards prescribed by the Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. (11-1-89)

**c.** The waste material not used in backfilling mined areas should be compacted, where practical, and should be covered and graded to allow surface drainage and ensure long-term stability. (11-1-89)

**d.** The operator may, if appropriate, use terraces or slope reduction to stabilize the face of any fill. Slopes of the fill material should not exceed angle of repose or generate erosion in which sediment enters waters of the state. (3-30-06)

**e.** Unless adequate drainage is provided through a fill area, all surface water above the fill shall be diverted away from the fill area into protected channels, and drainage shall not be directed over the unprotected face of the fill. (11-1-89)

**f.** The operator shall conduct revegetation activities with respect to such waste piles in accordance with Subsection 140.11. (3-30-06)

**08. Settling Ponds; Minimum Criteria.** (11-1-89)

**a.** Sediment Storage Volume. Settling ponds shall provide adequate sediment storage capacity to achieve compliance with applicable water quality standards and protect existing beneficial uses, and may require periodic cleaning and proper disposal of sediment. (11-1-89)

**b.** Water Detention Time. Settling ponds shall have an adequate theoretical detention time for water inflow and runoff entering the pond, but theoretical detention time may be reduced by improvements in pond design, chemical treatment, or other methods. (11-1-89)

**c.** Emergency Spillway. In addition to the sediment storage volume and water detention time, settling

ponds shall be designed to withstand and release storm flows as required by the Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code, and Safety of Dams Rules, where applicable. (11-1-89)

**09. Tailings Impoundments.** All tailings, dams, or other types of tailings impoundments shall be designed, constructed, operated, and decommissioned so that upon their abandonment, the dam and impoundment area will not constitute a hazard to human or animal life. (11-1-89)

**a.** Design criteria, construction techniques, and decommission techniques for tailings dams and impoundments shall comply with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, and applicable rules and regulations. (11-1-89)

**b.** Topsoil shall be removed from the area to be affected by the impounding structure and tailings reservoir in accordance with Subsection 140.04. (3-30-06)

**c.** Abandonment and Decommissioning of Tailings Impoundments. (3-30-06)

**i.** Dewatering. Tailings ponds shall be dewatered to the extent necessary to provide an adequate foundation for the approved post-mining use. (3-30-06)

**ii.** Control of surface waters. Surface waters shall either be channeled around the reservoir and impoundment structure or through the reservoir and breached structure. Permanent civil structures shall be designed and constructed to implement either method of channeling. The structure shall provide for erosion-free passage of waters and adequate energy dissipation prior to entry into the natural drainage below the impounding structure. (3-30-06)

**iii.** Detoxification. Hazardous chemical residues within the tailings pond shall be detoxified or covered with an adequate thickness of non-toxic material, to the extent necessary to achieve water quality standards in adjacent surface waters. (3-30-06)

**iv.** Reclamation. After implementing the required dewatering, detoxification, and surface drainage control measures, the reservoir and impounding structure shall be covered with topsoil or other material conducive to plant growth, in accordance with Subsection 140.04. Where such soils are limited in quantity or not available, and upon approval by the Department, physical or chemical methods for erosion control may be used. All such areas are to be revegetated in accordance with Subsection 140.11, unless specified otherwise. (3-30-06)

**d.** When the operator requests termination of its reclamation or permanent closure plan, pursuant to Section 150 of these rules, impoundment structures and any reservoirs retained as fresh water reservoirs after final reclamation or permanent closure shall be required to conform with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. (3-30-06)

**10. Permanent Cessation and Time Limits for Planting.** (11-1-89)

**a.** Seeding and planting of affected lands and/or a permanently closed cyanidation facility should be conducted during the first normal period for favorable planting conditions after final seedbed preparation. (3-30-06)

**b.** Reclamation activities, where possible, are encouraged to be concurrent with the mining operation and may be included in the approved reclamation plan. Final reclamation shall begin within one (1) year after the surface mining operations have permanently ceased on a mine panel. If the operator permanently ceases disposing of overburden on a waste area or permanently ceases removing minerals from a pit or permanently ceases using a road or other affected land, the reclamation activity on each given area shall start within one (1) year of such cessation, despite the fact that all operations as to the mine panel, which included such pit, road, overburden pile, or other affected land, has not permanently ceased. (11-1-89)

**c.** An operator shall be presumed to have permanently ceased surface mining operations on a given portion of affected land when no substantial amount of mineral or overburden material has been removed or overburden placed on an overburden dump, or no significant use has been made of a road during the prior three (3) years. If an operator does not plan to use an affected area for three (3) or more years but intends thereafter to use the

affected area for surface mining operations and desires to defer final reclamation until after its subsequent use, the operator shall submit a notice of intent and request for deferral of reclamation to the director, in writing. If the director determines that the operator plans to continue the operation within a reasonable period of time, the director shall notify the operator and may require actions to be taken to reduce degradation of surface resources until operations resume. If the director determines that use of the affected land for surface mining operations will not be continued within a reasonable period of time, the director shall proceed as though the surface mining operation has been abandoned, but the operator shall be notified of such decision at least thirty (30) days before taking any formal administrative action. (11-1-89)

**11. Revegetation Activities.** (11-1-89)

**a.** The operator shall select and establish plant species that can be expected to result in vegetation comparable to that growing on the affected lands or on a closed cyanidation facility prior to surface mining or cyanidation facility operations, respectively. Certified weed free seed should be used in revegetation. The operator may use available technical data and results of field tests for selecting seeding practices and soil amendments which will result in viable revegetation. These practices of selection may be included in an approved reclamation plan or permanent closure. (3-30-06)

**b.** Unless otherwise specified in the approved reclamation or permanent closure plan, the success of revegetation efforts shall be measured against the existing vegetation on site prior to the surface mining or cyanidation facility operation, or against an adjacent reference area supporting similar types of vegetation. (3-30-06)

**i.** The ground cover of living plants on the revegetated area should be comparable to the ground cover of living plants on the adjacent reference area for two (2) full growing seasons after cessation of soil amendment or irrigation. (11-1-89)

**ii.** For purposes of this rule, ground cover shall be considered comparable if it has, on the area actually planted at least seventy percent (70%) of the premining ground cover for the mined area or adjacent reference area; (11-1-89)

**iii.** For locations with an average annual precipitation of more than twenty-six (26) inches, the director, in approving a reclamation or permanent closure plan, may set a minimum standard for success of revegetation as follows: Vegetative cover of seventy percent (70%) for two (2) full growing seasons in areas planted to herbaceous species only; or fifty percent (50%) vegetative cover for two (2) full growing seasons and six hundred (600) woody plants per acre in areas planted to a mixture of herbaceous and woody species. (3-30-06)

**iv.** As used in this section, “herbaceous species” means grasses, legumes, and other forbs; “woody plants” means woody shrubs, trees, and vines; and “ground cover” means the area of the ground surface covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area measured. Rock surface areas will be excluded from this calculation. (11-1-89)

**v.** For previously mined areas that were not reclaimed to the standards required by Section 140, and which are affected by the surface mining or cyanidation facility operations, vegetation should be established to the extent necessary to control erosion, but shall not be less than that which existed before redisturbance; and (3-30-06)

**vi.** Vegetative cover shall not be less than that required to control erosion. (11-1-89)

**c.** Introduced species may be planted if they are known to be comparable to previous vegetation, or if known to be of equal or superior use for the approved post-mining use of the affected land, or, if necessary, to achieve a quick, temporary cover for soil stabilization purposes. Species classified as poisonous or noxious weed species shall not be used in revegetation. (11-1-89)

**d.** By mutual agreement of the director, the landowner, and the operator, a site may be converted to a different, more desirable or more economically suitable habitat. (3-30-06)

**e.** Planting of grasses and forbs should be done in a manner which promotes rapid stabilization of the soil surface. Wherever terrain permits, grasses and forbs should be drilled or compacted into the ground using

agricultural grass planting equipment or other seeders specifically designed for mine revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable. (11-1-89)

**f.** The operator should plant shrubs or shrub seed, as required, where shrub communities existed prior to mining. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass seeding. Where the landowner desires a specific land use such as grazing or cropland, shrubs will not be required in the revegetation species mix. Shrub lands undergoing revegetation with shrubs shall be protected from erosion by vegetation, chemical, or other acceptable means during establishment of the shrubs. (11-1-89)

**g.** Reforestation. Tree stocking of forestlands should meet the following criteria: (3-30-06)

**i.** Trees that are adapted to the site should be planted on the area to be revegetated in a density which can be expected over time to yield a timber stand comparable to premining timber stands; (11-1-89)

**ii.** Trees shall be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and (11-1-89)

**iii.** Forestlands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. (11-1-89)

**h.** Revegetation is not required on the following areas: (11-1-89)

**i.** Affected lands, or portions thereof, where planting is not practicable or reasonable because the soil is composed of excessive amounts of sand, gravel, shale, stone, or other material to such an extent to prohibit plant growth; (11-1-89)

**ii.** Any mined area or overburden stockpiles proposed to be used in the mining operations for haulage roads, so long as those roads are not abandoned; (3-30-06)

**iii.** Any mined area or overburden stockpile, where lakes are formed by rainfall or drainage runoff from adjoining lands; (3-30-06)

**iv.** Any mineral stockpile; (11-1-89)

**v.** Any exploration trench which will become a part of a pit or an overburden disposal area; and (3-30-06)

**vi.** Any road which is to be used in mining operations, so long as the road is not abandoned. (11-1-89)

**i.** Mulching. Mulch should be used on severe sites and may be required by the reclamation or permanent closure plan where slopes are steeper than three to one (3:1) or the mean annual rainfall is less than twelve (12) inches. When used, straw or hay mulch should be obtained from certified weed free sources. "Mulch" means vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation which will provide a micro-climate more suitable for germination and growth on severe sites. Annual grains such as rye, oats, and wheat may be used as a substitute for mulch where they will provide adequate protection and will be replaced by permanent species within a reasonable length of time. (3-30-06)

**12. Petroleum-Based Products and Chemicals.** All refuse, chemical and petroleum products and equipment should be stored and maintained in a designated location away from surface water and disposed of in such a manner as to prevent their entry into a waterway. (3-30-06)

## IDAPA 20 – IDAHO DEPARTMENT OF LANDS

### 20.03.04 – RULES FOR THE REGULATION OF BEDS, WATERS, AND AIRSPACE OVER NAVIGABLE LAKES IN THE STATE OF IDAHO

DOCKET NO. 20-0304-1801

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 58-104(6), 58-105, and 58-1304, 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:

A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 5, 2018, [Vol. 18-9, page 319](#).

Changes to the pending rule were made that differ from the proposed text. These changes are a result of clarification from the Idaho Office of Administrative Rules that the date of the code being incorporated by reference is not required when incorporating by reference Idaho Administrative Code. Previously proposed text “revised as of March 29, 2017” is being removed from Subsections 004.01 and 004.02.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 5, 2018, Idaho Administrative Bulletin, [Vol. 18-9, pages 319-331](#).

**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:

No fiscal impact to the state general fund is anticipated as a result of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Andrew Smyth, Public Trust Program Manager, at (208) 334-0248.

Dated this 16th day of October, 2018.

Andrew Smyth, Public Trust Program Manager  
Resource Protection and Assistance Bureau  
Idaho Department of Lands  
300 N. 6th Street, Suite 103  
Boise, ID 83720-0050  
Phone: (208) 334-0248  
Fax: (208) 769-3698

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6), 58-105, and 58-1304, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**PUBLIC HEARING**  
**Thursday, September 20, 2018 – 10:00 a.m.**

**Idaho State Capitol**  
**Room WW55**  
**700 West Jefferson Street**  
**Boise, ID 83702**

The hearing site 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:

Currently, IDAPA 20.03.04.020 requires submission of paper copies of applications for encroachment permits. The Idaho Department of Lands (Department) is developing a web-based portal and information management system that will allow applications to be submitted electronically. The proposed changes would allow applicants to submit applications either on paper or electronically.

Currently, IDAPA 20.03.04.015.05 allows existing permitted boat garages to be maintained or replaced at their current size. The proposed change would allow existing permitted boat garages to be maintained or replaced at the existing height and at the same square footage of the existing footprint.

Currently, IDAPA 20.03.04.015.10 requires float homes to comply with the 2003 Uniform Plumbing Code and the 2008 National Electrical Code. These referenced codes are not current. The Department is proposing to reference IDAPA 07.02.06 and IDAPA 07.01.06 in this paragraph to match the proposed change to the incorporation by reference in IDAPA 20.03.04.004.

Section 58-1306, Idaho Code, requires that a notice of application for nonnavigational encroachments be published in the local newspaper. Section 58-1307, Idaho Code, provides that the applicant is responsible for the cost of publication of the notice. Currently, IDAPA 20.03.04.020 does not indicate the cost of publication is to be paid by the applicant for nonnavigational encroachments for bank stabilization and erosion control. The proposed change would align rule with statute and provide that the publication deposit be submitted with an application to permit riprap, which is the primary form of nonnavigational encroachment for bank stabilization and erosion control used in Idaho.

Currently, IDAPA 20.03.04.080 provides that the Department shall provide permittees with a notice of noncompliance/proposed permit revocation when it has determined the rules have been violated and/or a cause exists for revocation of an encroachment permit. However, non-permittees may be in violation of the rules and should receive notification as well. The proposed change would clarify that the Department shall provide notice to anyone who may be in violation of the rules.



**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:

No fiscal impact to the state general fund is anticipated as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was conducted pursuant to Section 67-5220(1), Idaho Code. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin [Volume 18-6, Page 84](#).

**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:

Currently, IDAPA 20.03.04.004.01 incorporates by reference the 2008 National Electric Code (NEC). Since 2008, the NEC has been updated three times (2011, 2014, and 2017). Furthermore, the Idaho Electrical Board has adopted IDAPA 07.01.06, the Rules Governing the Use of National Electrical Code, which prescribe which NEC edition is to be administered by the Idaho Electrical Board and identifies certain amendments to the NEC. In order to align with the Idaho Electric Board, the Idaho Department of Lands is proposing to incorporate by reference IDAPA 07.01.06, as opposed to the NEC.

Currently, IDAPA 20.03.04.004.02 incorporates by reference the 2003 Uniform Plumbing Code (UPC). Since 2003, the UPC has been updated five times (2006, 2009, 2012, 2015, and 2018). Furthermore, the Idaho Plumbing Board has adopted IDAPA 07.02.06, the Rules Concerning Idaho State Plumbing Code, which—instead of incorporating by reference the UPC—incorporates the Idaho State Plumbing Code, which is based on the UPC. In order to align with the Idaho Plumbing Board, the Idaho Department of Lands is proposing to incorporate by reference IDAPA 07.02.06, as opposed to the UPC.

The United States Aids to Navigation System was first incorporated by reference in IDAPA 20.03.04 in 2008; however, this incorporated material was not identified with specificity and will now include the date when the code, standard or rule was published, approved or became effective as required by Idaho Code § 67-5229(3). The United States Aids to Navigation System is found in 33 CFR Part 62. Since 2008, two sections have been modified, both in 2015:

1. Section 62.21(c) was modified to reflect discontinuation of print publication of Light List, United States Coast Pilot, Local Notices to Mariners, and Notice to Mariners, in favor of electronic-only publication.
2. § 62.52 Automatic Identification System Aids to Navigation (AIS AtoN) was added, reading:

(a) Aids to Navigation (AtoN) may be enhanced by the use of an automatic identification system (AIS). AIS is a maritime navigation safety communications protocol standardized by the International Telecommunication Union and adopted by the International Maritime Organization for the broadcast or exchange of navigation information between vessels, aircraft, and shore stations. AIS AtoN can autonomously and at fixed intervals broadcast the name, position, dimensions, type, characteristics and status from or concerning an aid to navigation.

(b) AIS AtoN can be either real (physically fitted to the AtoN), synthetic (physically fitted somewhere other than to the AtoN) or virtual (physically nonexistent, but capable of being portrayed on AIS-capable displays).

(c) AIS AtoN can also be used to broadcast both laterally (e.g., Port Hand Mark) and non-laterally significant marine safety information (e.g., environmental data, tidal information, and navigation warnings).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Andrew Smyth, Public Trust Program Manager, at (208) 334-0248.

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 26, 2018.

Dated this 5th day of September, 2018.

**LINK: LSO Rules Analysis Memo and Incorporation By Reference Synopsis (IBRS)**

Italicized red text that is double underscored indicates amendments to the proposed text in the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 20-0304-1801

**004. INCORPORATION BY REFERENCE.**

The following documents are incorporated by reference into these rules:

(4-2-08)

01. ~~2008 National Electrical Code~~ IDAPA 07.01.06, "Rules Governing the Use of National Electrical Code." ~~The 2008 National Electrical Code is available at the office of the Division of Building Safety at 1090 E. Watertower St., Meridian, Idaho 83642~~ IDAPA 07.01.06 is available at <https://adminrules.idaho.gov/rules/current/07/070106.pdf>. ~~(3-29-10)( )~~ ( )

02. ~~2003 Uniform Plumbing Code~~ IDAPA 07.02.06, "Rules Concerning Idaho State Plumbing Code." ~~The 2003 Uniform Plumbing Code is available at the Division of Building Safety, 1090 E. Watertower St., Meridian, Idaho 83642; and at the Division of Building Safety, 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814~~ This rule is available at <https://adminrules.idaho.gov/rules/current/07/070206.pdf>. ~~(3-29-10)( )~~ ( )

03. ~~United States Aid to Navigation System~~ 33 CFR Part 62, revised as of July 27, 2015 (United States Aids to Navigation System). ~~Prepared by the United States Coast Guard and available on the Internet at <http://www.uscgboating.org/safety/aton/system.htm>~~ The Electronic Code of Federal Regulations (eCFR) is available at <http://www.ecfr.gov/cgi-bin/ECFR>. ~~(4-2-08)( )~~ ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**015. ENCROACHMENT STANDARDS.**

01. **Single-Family and Two-Family Docks.** The following parameters govern the size and dimensions of single-family docks and two-family docks. (7-1-98)

a. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width, excluding the slip cut out. (4-2-08)

b. Total surface decking area waterward of the natural or ordinary or artificial high water mark shall not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock and shall not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock. (4-2-08)

c. No portion of the docking facility shall extend beyond the line of navigability. Shorter docks are

encouraged whenever practical and new docks normally will be installed within the waterward extent of existing docks or the line of navigability. (3-29-10)

**d.** A variance to the standards contained in Subsection 015.01 of these rules may be approved by the department where it can be justified by site specific considerations such as the distance to the established line of navigability. (3-29-10)

**02. Community Docks.** (7-1-98)

**a.** A community dock shall be considered a commercial navigational aid for purposes of processing the application. (4-2-08)

**b.** No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width except breakwaters when justified by site specific conditions and approved by the department. (4-2-08)

**c.** A community dock shall not have less than fifty (50) feet combined shoreline frontage. Moorage facilities will be limited in size as a function of the length of shoreline dedicated to the community dock. The surface decking area of the community dock shall be limited to the product of the length of shoreline multiplied by seven (7) square feet per lineal feet or a minimum of seven hundred (700) square feet. However, the Department, at its discretion, may limit the ultimate size when evaluating the proposal and public trust values. (4-2-08)

**d.** If a breakwater will be incorporated into the structure of a dock, and a need for the breakwater can be demonstrated, the department may allow the surface decking area to exceed the size limitations of Paragraph 015.02.c of these rules. (4-2-08)

**e.** A person with an existing community dock that desires to change the facility to a commercial marina must submit the following information to the department: (4-2-08)

**i.** A new application for an encroachment permit. (4-2-08)

**ii.** Text and drawings that describe which moorage will be public and which moorage will be private. (4-2-08)

**03. Commercial Marina.** (4-2-08)

**a.** Commercial marinas must have a minimum of fifty percent (50%) of their moorage available for use by the general public on either a first come, first served basis for free or rent, or a rent or lease agreement for a period of time up to one (1) year. Moorage contracts may be renewed annually, so long as a renewal term does not exceed one (1) year. Moorage for use by the general public may not include conditions that result in a transfer of ownership of moorage or real property, or require membership in a club or organization. (3-29-10)

**b.** Commercial marinas that are converted to a community dock must conform to all the community dock standards, including frontage requirements and square footage restrictions. This change of use must be approved by the department through a new encroachment permit prior to implementing the change. (3-29-10)

**c.** If local city or county ordinances governing parking requirements for marinas have not been adopted, commercial marinas must provide a minimum of upland vehicle parking equivalent to one (1) parking space per two (2) public watercraft or float home moorages. If private moorage is tied to specific parking spaces or designated parking areas, then one (1) parking space per one (1) private watercraft or float home moorage shall be provided. In the event of conflict, the local ordinances shall prevail. (3-29-10)

**d.** If a commercial marina can be accessed from a road, marina customers must be allowed access via that road. (4-2-08)

**e.** Moorage that is not available for public use as described in Paragraph 015.03.a. of these rules is private moorage. (3-29-10)

f. When calculating the moorage percentage, the amount of public moorage shall be compared to the amount of private moorage. Commercial marinas with private float home moorage shall be required to provide either non-private float home moorage or two (2) public use boat moorages for every private float home moorage in addition to any other required public use boat moorages. (4-2-08)

g. When private moorage is permitted, the public moorage must be of similar size and quality as private moorage, except for float home moorage as provided in Paragraph 015.03.f. of these rules. (3-29-10)

h. Commercial marinas with private moorage must form a condominium association, co-op, or other entity that owns and manages the marina, littoral rights, upland property sufficient to maintain and operate a marina, and private submerged land, if present. This entity is responsible for obtaining and maintaining an encroachment permit under these rules and a submerged lands lease under IDAPA 20.03.17, "Rules Governing Leases on State-Owned Submerged lands and Formerly Submerged Lands." (4-2-08)

i. Existing commercial marinas that desire to change their operations and convert some of their moorage to private use must keep at least fifty percent (50%) of their moorage available for use by the general public. This change in operations must be approved by the department through a new encroachment permit prior to implementation of the change. The permit application shall describe, in text and in drawings, which moorage will be public and which moorage will be private. (4-2-08)

**04. Covered Slip.** (4-2-08)

a. Covered slips, regardless of when constructed, may not have a temporary or permanent residential area. (4-2-08)

b. Slip covers should have colors that blend with the natural surroundings and are approved by the department. (4-2-08)

c. Covered slips may not be supported by extra piling nor constructed with hard roofs. (3-29-10)

d. Slip covers with permanent roofs and up to three (3) walls may be maintained or replaced at their current size if they were previously permitted or if they were constructed prior to January 1, 1975. These structures may not be expanded nor converted to boat garages. (3-29-10)

e. Fabric covered slips must be constructed as canopies without sides unless the following standards are followed: (4-2-08)

i. At least two (2) feet of open space is left between the bottom of the cover and the dock or pier surface; and (4-2-08)

ii. Fabric for canopy and sides will transmit at least seventy-five percent (75%) of the natural light. (4-2-08)

**05. Boat Garage.** (4-2-08)

a. Boat garages are considered nonnavigational encroachments. (4-2-08)

b. Applications for permits to construct new boat garages, ~~or to~~ expand the total square footage of the existing footprint, or raise the height will not be accepted unless the application is to support local emergency services. (4-2-08)( )

c. Existing permitted boat garages may be maintained or replaced at their with the current size square footage of their existing footprint and height. (4-2-08)( )

d. Relocation of an existing boat garage will require a permit. (4-2-08)

**06. Breakwaters.** Breakwaters built upon the lake for use in aid of navigation will not be authorized below the level of normal low water without an extraordinary showing of need, provided, however that this shall not apply to floating breakwaters secured by piling and used to protect private property from recurring wind, wave, or ice damage, or used to control traffic in busy areas of lakes. The breakwater shall be designed to counter wave actions of known wave heights and wave lengths. (4-2-08)

**07. Seawalls.** Seawalls should be placed at or above the ordinary high water mark, or the artificial high water mark, if applicable. Seawalls are not an aid to navigation, and placement waterward of the ordinary or artificial high water mark will generally not be allowed. (4-2-08)

**08. Riprap.** (4-2-08)

**a.** Riprap used to stabilize shorelines will consist of rock that is appropriately sized to resist movement from anticipated wave heights or tractive forces of the water flow. The rock shall be sound, dense, durable, and angular rock resistant to weathering and free of fines. The riprap shall overlie a distinct filter layer which consists of sand, gravel, or nonwoven geotextile fabric. The riprap and filter layer shall be keyed into the bed below the ordinary or artificial high water mark, as applicable. If the applicant wishes to install riprap with different standards, they must submit a design that is signed and stamped for construction purposes by a professional engineer registered in the state of Idaho. (4-2-08)

**b.** Riprap used to protect the base of a seawall or other vertical walls may not need to be keyed into the bed and may not require a filter layer, at the department's discretion. (4-2-08)

**09. Mooring Buoys.** Buoys shall be installed a minimum of thirty (30) feet away from littoral right lines of adjacent littoral owners. One (1) mooring buoy per littoral owner shall be allowed. (4-2-08)

**10. Float Homes.** (4-2-08)

**a.** Applications for permits to construct new float homes, or to expand the total square footage of the existing footprint, will not be accepted. (4-2-08)

**b.** Applications for relocation of float homes within a lake or from one (1) lake to another shall be subject to the following requirements: (4-2-08)

**i.** Proof of ownership or long term lease of the uplands adjacent to the relocation site must be furnished to the Department. (7-1-98)

**ii.** The applicant must show that all wastes and waste water will be transported to shore disposal systems by a method approved by the Idaho Department of Environmental Quality or the appropriate local health authority. Applicant must either obtain a letter from the local sewer district stating that the district will serve the float home or demonstrate that sewage will be appropriately handled and treated. Applicant must also provide a statement from a professional plumber licensed in the state of Idaho that the plumbing was designed ~~according to the 2003 Uniform Plumbing Code~~ in accordance with IDAPA 07.02.06, "Rules Concerning the Idaho State Plumbing Code," as incorporated by reference in Subsection 004.02 of these rules, installed properly, and has been pressure tested. (3-29-10)( )

**c.** Encroachment applications and approved local permits are required for replacement of, or adding another story to, a float home. (4-2-08)

**d.** All plumbing ~~and electrical~~ work on float homes must be done in accordance with ~~the 2003 Uniform Plumbing Code and the 2008 National Electrical Code~~ IDAPA 07.02.06, "Rules Concerning the Idaho State Plumbing Code" and IDAPA 07.01.06, "Rules Governing the Use of National Electrical Code," as incorporated by reference in Section 004 of these rules. (3-29-10)( )

**e.** All float homes in Idaho that connect with upland sewer or septic systems must implement the following standards by December 31, 2012: (3-29-10)

i. The holding tank with pump or grinder unit shall be adequately sealed to prevent material from escaping and to prevent lake water from entering. The tank lid shall have a gasket or seal, and the lid shall be securely fastened at all times unless the system is being repaired or maintained. An audible overflow alarm shall also be installed. (3-29-10)

ii. Grinders or solids handling pumps shall be used to move sewage from the float home to the upland system. (3-29-10)

iii. If solids handling pumps are used, they shall have a minimum two (2) inch interior diameter discharge, and the pipe to the shoreline shall also have a minimum two (2) inch interior diameter. Connectors used on either end of this pipe shall not significantly reduce the interior diameter. (3-29-10)

iv. The pipeline from the float home to the shoreline shall be a continuous line with no mechanical connections. Check valves and manual shutoff valves shall be installed at each end of the line. Butt fused HDPE, two hundred (200) psi black polyethylene pipe, or materials with similar properties shall be used. The pipeline shall contain sufficient slack to account for the maximum expected rise and fall of the lake or river level. The pipeline shall be buried in the lakebed for freeze protection where it will be exposed during periods of low water. Pipelines on the bed of the lake shall be appropriately located and anchored so they will not unduly interfere with navigation or other lake related uses. (3-29-10)

v. Manifolds below the ordinary, or artificial if applicable, high water mark that collect two (2) or more sewer lines and then route the discharge to the shore through a single pipe are not allowed. All float homes must have an individual sewer line from the float home to a facility on the shore. (3-29-10)

f. All float home permittees will have their float homes inspected by a professional plumber licensed in the state of Idaho by December 31, 2012. The inspection will be documented with a report prepared by the inspector. The report will document whether or not the float homes meet the standards in Paragraph 015.10.e. of these rules, and will be provided to the department before the above date. (3-29-10)

g. A float home permittee must request an extension, and give cause for the extension, if their float home does not meet the standards in paragraph 015.01.e. of these rules by December 31, 2012. Extensions beyond December 31, 2016 will not be allowed. A permittee's failure to either request the extension, if needed, or to meet the December 31, 2016 deadline will be a violation subject to the provisions of Section 080 of these rules. (3-29-10)

h. Construction or remodel work on a float home that costs fifty percent (50%) or more of its assessed value will require an encroachment application and construction drawings stamped by an engineer licensed in the state of Idaho. (3-29-10)

**11. Excavated or Dredged Channel. (4-2-08)**

a. Excavating, dredging, or redredging channels shall require an encroachment permit and shall be processed in accordance with Section 030 of these rules. (4-2-08)

b. An excavated or dredged channel or basin to provide access to navigable waters must have a clear environmental, economic, or social benefit to the people of the state, and shall not result in any appreciable environmental degradation. A channel or basin shall not be approved if the cumulative effects of these features in the same navigable lake would be adverse to fisheries or water quality. (3-29-10)

c. Whenever practical, such channels or basins shall be located to serve more than one (1) littoral owner or a commercial marina; provided, however, that no basin or channel will be approved that will provide access for watercraft to nonlittoral owners. (3-29-10)

**12. ATONs. Aids to Navigation will conform to the requirements established by the United States Aid to Navigation system. (4-2-08)**

**13. General Encroachment Standards. (4-2-08)**

- a.** Square Footage. The square footage limitations in Subsections 015.01 and 015.02 include all structures beyond the ordinary or artificial high water mark such as the approach, ramp, pier, dock, and all other floating or suspended structures that cover the lake surface, except for: (3-29-10)
- i. Boat lifts as allowed pursuant to Paragraph 015.13.b. (3-29-10)
  - ii. Jet ski ramp, port, or lift as allowed pursuant to Paragraph 015.13.b. (3-29-10)
  - iii. Slip covers. (4-2-08)
  - iv. Undecked portions of breakwaters. (4-2-08)
- b.** Boat Lifts and Jet Ski Lifts. (4-2-08)
- i. Single-family docks are allowed a single boat lift and two (2) jet ski lifts, or two (2) boat lifts, without adding their footprint to the dock square footage. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01. (4-2-08)
  - ii. Two-family docks are allowed two (2) boat lifts and four (4) jet ski lifts, or four (4) boat lifts, without adding their footprint to the dock square footage. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01. (4-2-08)
  - iii. A boat lift or jet ski lift within lines drawn perpendicular from the shore to the outside dock edges will not require a separate permit if the lift is outside the ten (10) foot adjacent littoral owner setback, the lift does not extend beyond the line of navigability, and the lift does not count toward the square footage of the dock as outlined in Subparagraphs 015.13.b.i. and 015.13.b.ii. The permittee shall send a revised permit drawing with the lift location as an application to the department. If the lift meets the above conditions, the application shall be approved as submitted. Future applications shall include the lifts. (3-29-10)
  - iv. Community docks are allowed one (1) boat lift or two (2) jet ski lifts per moorage. Boat lifts placed outside of a slip shall be oriented with the long axis parallel to the dock structure. Additional lifts will require that fifty percent (50%) of their footprint be included in the allowable square footage of the dock or pier as per Subsection 015.02. (3-29-10)
- c.** Angle from Shoreline. (4-2-08)
- i. Where feasible, all docks, piers, or similar structures shall be constructed so as to protrude as nearly as possible at right angles to the general shoreline, lessening the potential for infringement on adjacent littoral rights. (4-2-08)
  - ii. Where it is not feasible to place docks at right angles to the general shoreline, the department shall work with the applicant to review and approve the applicant's proposed configuration and location of the dock and the dock's angle from shore. (4-2-08)
- d.** Length of Community Docks and Commercial Navigational Encroachments. Docks, piers, or other works may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the director. If a normally accepted line of navigability has not been established through use, the director may from time to time as he deems necessary, designate a line of navigability for the purpose of effective administration of these rules. (4-2-08)
- e.** Presumed Adverse Effect. It will be presumed, subject to rebuttal, that single-family and two-family navigational encroachments will have an adverse effect upon adjacent littoral rights if located closer than ten (10) feet from adjacent littoral right lines, and that commercial navigational encroachments, community docks or

nonnavigational encroachments will have a like adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines. Written consent of the adjacent littoral owner or owners will automatically rebut the presumption. All boat lifts and other structures attached to the encroachments shall be subject to the above presumptions of adverse affects. (4-2-08)

**f.** Weather Conditions. Encroachments and their building materials shall be designed and installed to withstand normally anticipated weather conditions in the area. Docks, piers, and similar structures shall be adequately secured to pilings or anchors to prevent displacement due to ice, wind, and waves. Flotation devices for docks, float homes, etc. shall be reasonably resistant to puncture and other damage. (4-2-08)

**g.** Markers. If the department determines that an encroachment is not of sufficient size to be readily seen or which poses a hazard to navigation, the permit shall specify that aids to navigation be used to clearly identify the potential hazard. (4-2-08)

**h.** Overhead Clearance. (4-2-08)

**i.** Overhead clearance between the natural or ordinary high water mark or the artificial high water mark, if there be one, and the structure or wires must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the encroachment. In no case will the clearance be required to exceed thirty (30) feet unless the department determines after public hearing that it is in the overall public interest that the clearance be in excess of thirty (30) feet. Irrespective of height above the water, approval of structures or wires presenting a hazard for boating or other water related activities may be conditioned upon adequate safety marking to show clearance and otherwise to warn the public of the hazard. The department shall specify in the permit the amount of overhead clearance and markings required. (4-2-08)

**ii.** When the permit provides for overhead clearance or safety markings under Paragraph 015.13.h., the department shall consider the applicable requirements of the United States Coast Guard, the Idaho Transportation Department, the Idaho Public Utilities Commission and any other applicable federal, state, or local regulations. (4-2-08)

**i.** Beaded Foam Flotation. Beaded foam flotation shall be completely encased in a manner that will maintain the structural integrity of the foam. The encasement shall be resistant to the entry of rodents. (4-2-08)

**14. Floating Toys.** (3-29-10)

**a.** Encroachment permits are not required for floating toys, except where noted in Paragraph 015.14.b. Counties and cities may regulate floating toys for public safety and related concerns. (3-29-10)

**b.** A floating toy becomes a nonnavigational encroachment, and an encroachment permit is required, when one (1) of the following occurs: (3-29-10)

**i.** It is anchored to the bed of the lake with a device that requires equipment to remove it from the bed of the lake, or; (3-29-10)

**ii.** It is located waterward of the line of navigability for more than twenty-four (24) consecutive hours. (3-29-10)

**15. Lake Specific Encroachment Permit Terms.** (3-29-10)

**a.** The department may use encroachment permit conditions specific to individual lakes if the permit conditions are needed to protect public trust values and the permit condition is approved by the Land Board. (3-29-10)

**b.** Lake specific encroachment permit conditions may supplement, negate, or alter encroachment standards established in Section 015 of these rules. (3-29-10)

**c.** Lake specific encroachment permit conditions shall be used to assist with implementing lake



management plans authorized by Title 39, Chapter 66, Idaho Code; Title 39, Chapter 85, Idaho Code; Title 67, Chapter 43, Idaho Code; and Title 70, Chapter 2, Idaho Code. The purpose for using such lake specific permit conditions is to address lake specific environmental concerns that require attention and create a need for a variance from what is allowed on other lakes. (3-29-10)

d. Lake specific encroachment permit terms may be read at the Idaho Department of Lands website: <http://www.idl.idaho.gov/>. (3-29-10)

**016. -- 019. (RESERVED)**

**020. APPLICATIONS.**

**01. Encroachment Applications.** No person shall hereafter make or cause to be made any encroachment on, in or above the beds or waters of any navigable lake in the state of Idaho without first making application to and receiving written approval from the department. The placing of dredged or fill material, refuse or waste matter intended as or becoming fill material, on or in the beds or waters of any navigable lake in the state of Idaho shall be considered an encroachment and written approval by the department is required. If demolition is required prior to construction of the proposed encroachment, then the application must describe the demolition activities and the steps that will be taken to protect water quality and other public trust values. No demolition activities may proceed until the permit is issued. (4-2-08)

**02. Signature Requirement.** Only persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits. A person who has been specifically granted littoral rights or dock rights from a littoral owner shall also be eligible for an encroachment permit; the grantor of such littoral rights, however, shall no longer be eligible to apply for an encroachment permit. Except for waterlines or utility lines, the possession of an easement to the shoreline does not qualify a person to be eligible for an encroachment permit. (4-2-08)

**03. Other Permits.** Nothing in these rules shall excuse a person seeking to make an encroachment from obtaining any additional approvals lawfully required by federal, local or other state agencies. (9-13-90)

**04. Repairs, Reinstallation of Structures.** No permit is required to clean, maintain, or repair an existing permitted encroachment, but a permit is required to completely replace, enlarge, or extend an existing encroachment. Replacement of single-family and two-family docks may not require a permit if they meet the criteria in Section 58-1305(e), Idaho Code. Reinstalling the top or deck of a dock, wharf or similar structure shall be considered a repair; reinstallation of winter damaged or wind and water damaged pilings, docks, or float logs shall be considered a repair. Repairs, or replacements under Section 58-1305(e), Idaho Code, that adversely affect the bed of the lake will be considered a violation of these rules. (4-7-11)

**05. Dock Reconfiguration.** (4-2-08)

a. Rearrangement of single-family and two-family docks will require a new application for an encroachment permit. (4-2-08)

b. Rearrangement of community docks and commercial navigational encroachments may not require a new application for an encroachment permit if the changes are only internal. The department shall be consulted prior to modifications being made, and shall use the following criteria to help determine if a new permit must be submitted: (4-2-08)

i. Overall footprint does not change in dimension or orientation; (4-2-08)

ii. No increase in the square footage, as described in the existing permit and in accordance with Paragraph 015.13.a., occurs. This only applies to community docks; (3-29-10)

iii. The entrances and exits of the facility do not change. (4-2-08)

**06. Redredging.** Redredging a channel or basin shall be considered a new encroachment and a permit

is required unless dredging is specifically authorized by the outstanding permit. Water quality certification from the Idaho Department of Environmental Quality is required regardless of how dredging is addressed in any existing or future permit. (4-2-08)

**07. Forms, Filing.** ~~Applications must be in writing on forms provided by the Department or copies.~~ Applications and plans shall be filed ~~in the local office of the Department, whose location is available on the internet at [www.idl.idaho.gov](http://www.idl.idaho.gov), or the director's office in Boise;~~ **on forms provided by the Department** together with filing fees and costs of publication when required by these rules. Costs of preparation of the application, including all necessary maps and drawings, shall be paid by the applicant. (4-2-08)(    )

**a.** Plans shall include the following information ~~on paper no larger than eight and one half by fourteen (8 1/2"x14") inches~~ **at a scale sufficient to show the information requested:** (4-2-08)(    )

i. Lakebed profile in relationship to the proposed encroachment. The lakebed profile shall show the summer and winter water levels. (4-2-08)

ii. Copy of most recent survey or county plat showing the full extent of the applicant's lot and the adjacent littoral lots. (4-2-08)

iii. Proof of current ownership or control of littoral property or littoral rights. (4-2-08)

iv. A general vicinity map. (4-2-08)

v. Scaled air photos or maps showing the lengths of adjacent docks as an indication of the line of navigability, distances to adjacent encroachments, and the location and orientation of the proposed encroachment in the lake. (4-2-08)

vi. Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface. (4-2-08)

vii. Names and current mailing addresses of adjacent littoral landowners. (4-2-08)

**b.** Applications must be submitted or approved by the littoral owner or, if the encroachment will lie over or upon private lands between the natural or ordinary high water mark and the artificial high water mark, the application must be submitted or approved by the owner of such lands. When the littoral owner is not the applicant, the application shall bear the owner's signature as approving the encroachment prior to filing. (4-2-08)

**c.** If more than one (1) littoral owner exists, the application must bear the signature of all littoral owners, or the signature of an authorized officer of a designated homeowner's or property management association. (4-2-08)

**d.** Applications for noncommercial encroachments intended to improve waterways for navigation, wildlife habitat and other recreational uses by members of the public must be filed by any municipality, county, state, or federal agency, or other entity empowered to make such improvements. Application fees are not required for these encroachments. (4-2-08)

**e.** The following applications shall be accompanied by the respective nonrefundable filing fees together with a deposit toward the cost of newspaper publication, which deposit shall be determined by the director at the time of filing: (4-2-08)

i. Nonnavigational encroachments require a fee of one thousand dollars (\$1,000); **except that nonnavigational encroachments for bank stabilization and erosion control require a fee of five hundred fifty dollars (\$550).** (4-2-08)(    )

ii. Commercial navigational encroachments require a base fee of two thousand dollars (\$2,000). If the costs of processing an application exceed this amount, then the applicant may be charged additional costs as allowed by Title 58, Chapter 13, Section 58-1307, Idaho Code; (4-2-08)

- iii. Community navigational encroachments require a fee of two thousand dollars (\$2,000); and (4-2-08)
- iv. Navigational encroachments extending beyond the line of navigability require a fee of one thousand dollars (\$1,000). (4-2-08)
- f. Applicants shall pay any balance due on publication costs before written approval will be issued. The Department shall refund any excess at or before final action on the application. (9-13-90)
- g. Application for a single-family or two-family dock not extending beyond the line of navigability or a nonnavigational encroachment for a buried or submerged water intake line serving four or less households shall be accompanied by a nonrefundable filing fee of three hundred dollars (\$300). (4-7-11)
- ~~h. A nonnavigational encroachment for bank stabilization and erosion control shall be accompanied by a nonrefundable filing fee of five hundred fifty dollars (\$550). (4-7-11)~~
- ~~i.~~ No publication cost is required for application for noncommercial navigational encroachment not extending beyond the line of navigability or for application for installation of buried or submerged water intake lines and utility lines. (9-13-90)
- ~~ii.~~ Applications and plans shall be stamped with the date of filing. (7-1-98)
- ~~iii.~~ Applications that are incomplete, not in the proper form, not containing the required signature(s), or not accompanied by filing fees and costs of publication when required, shall not be accepted for filing. The department shall send the applicant a written notice of incompleteness with a listing of the application's deficiencies. The applicant will be given thirty (30) days from receipt of the notice of incompleteness to resubmit the required information. The deadline may be extended with written consent of the department. If the given deadline is not met, the department will notify the applicant that the application has been denied due to lack of sufficient information. The applicant may reapply at a later date, but will be required to pay another filing fee and publication fee, if applicable. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**080. VIOLATIONS - PENALTIES.**

**01. Cease and Desist Order.** When the department determines that a violation of these rules is occurring due to the ongoing construction of an unauthorized encroachment or an unauthorized modification of a permitted encroachment, it may provide the landowner, contractor, or permittee with a written cease and desist order that shall consist of a short and plain statement of what the violation is, the pertinent legal authority, and how the violation may be rectified. This order will be served by personal service or certified mail. The cease and desist order shall be used to maintain the status quo pending formal proceedings by the department to rectify the violation. (4-2-08)

**02. Notice of Noncompliance/Proposed Permit Revocation.** When the department determines that these rules have been violated, a cause exists for revocation of a lake encroachment permit, or both of these have occurred, it shall provide the permittee or offending person with a notice of noncompliance/proposed permit revocation that shall consist of a short and plain statement of the violation including any pertinent legal authority. This notice shall also inform the permittee or offending person of what steps are needed to either bring the encroachment into compliance, if possible, or avoid revocation, or both. ~~(4-2-08)~~ ( )

**03. Noncompliance Resolution.** The department will attempt to resolve all noncompliance issues through conference with the permittee or other involved party. Any period set by the parties for correction of a violation shall be binding. If the department is unsuccessful in resolving the violations, then the department may pursue other remedies under Section 080 of these rules. (4-2-08)

**04. Violations.** The following acts or omissions shall subject a person to a civil penalty as allowed by Title 58, Chapter 13, Section 58-1308, Idaho Code: (4-2-08)

**a.** A violation of the provisions of Title 58, Chapter 13, Idaho Code, or of the rules and general orders adopted thereunder and applicable to navigable lakes; (4-2-08)

**b.** A violation of any special order of the director applicable to a navigable lake; or (4-2-08)

**c.** Refusal to cease and desist from any violation in regards to a navigable lake after having received a written cease and desist order from the department by personal service or certified mail, within the time provided in the notice, or within thirty (30) days of service of such notice if no time is provided. (4-2-08)

**d.** Willfully and knowingly falsifying any records, plans, information, or other data required by these rules. (4-2-08)

**e.** Violating the terms of an encroachment permit. (4-2-08)

**05. Injunctions, Damages.** The Board expressly reserves the right, through the director, to seek injunctive relief under Title 58, Chapter 13, Section 58-1308, Idaho Code and mitigation of damages under Title 58, Chapter 13, Section 58-1309, Idaho Code, in addition to the civil penalties provided for in Subsection 080.04 of these rules. (4-2-08)

**06. Mitigation, Restoration.** The board expressly reserves the right, through the director, to require mitigation and restoration of damages under Title 58, Chapter 13, Section 58-1309, Idaho Code, in addition to the civil penalties and injunctive relief provided for in Subsections 080.04 and 080.05 of these rules. The department may consult with other state agencies to determine the appropriate type and amount of mitigation and restoration required. (4-2-08)

**07. Revocation of Lake Encroachment Permits.** (4-2-08)

**a.** The department may institute an administrative action to revoke a lake encroachment permit for violation of the conditions of a permit, or for any other reason authorized by law. All such proceedings shall be conducted as contested case hearings subject to the provisions of Title 67, Chapter 52, Idaho Code, and IDAPA 20.01.01, "Rules of Practice and Procedure before the State Board of Land Commissioners." (4-2-08)

**b.** A hearing officer appointed to conduct the revocation hearing shall prepare recommended findings of fact and conclusions of law and forward them to the director for final adoption or rejection. (4-2-08)

**c.** An aggrieved party who appeared and testified at a hearing shall have the right to have the proceedings and final decision of the director reviewed by the district court of the county in which the violation or revocation occurred by filing a notice of appeal within twenty-eight (28) days from the date of the final decision. (4-2-08)

## IDAPA 20 – IDAHO DEPARTMENT OF LANDS

### 20.04.01 – RULES PERTAINING TO FOREST FIRE PROTECTION

DOCKET NO. 20-0401-1701

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 Title 38, Chapter 1, including Section 38-132, Idaho Code, and Title 38, Chapter 4, including Section 38-402, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule:

To implement fire protection best practices to lessen the risk of fire starts from forest operations on forest lands, the Idaho Department of Lands is amending fire protection requirements for spark arresters, fire tools and fire extinguishers, and fire crews. In addition, forest operation activities involving cable logging operations and the use of metal tracked harvesters are considered to be at greater risk of resulting in unwanted fire, and the Department is introducing new fire protection requirements for these forest operations to include on-site water supply, fire watch service, and operation area fire prevention practices.

The Department is revising spark arrester equipment requirements to align with current industry standards for internal combustion engine equipment and introducing a process to provide forest landowners and operators the ability to request an alternative practice, or Variance, that would achieve equal or better fire protection than practices as prescribed in rule. To clarify the intent of the rule for administration purposes, the Department has identified specific operation activities conducted on forest land that are subject to the fire protection requirements prescribed under Fire Tools and Fire Extinguishers and organized Fire Crews sections.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the August 1, 2018, Idaho Administrative Bulletin, [Vol. 18-8, pages 93–100](#).

**FISCAL IMPACT:** There are no imposed fees or charges to the public associated with the administration of the pending rule.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact JT Wensman, Bureau Chief – Fire Management, at (208) 769-1525.

Dated this 19th day of November, 2018.

JT Wensman, Bureau Chief  
Fire Management Bureau  
Idaho Department of Lands  
3284 W. Industrial Loop  
Coeur d'Alene, ID 83815  
Phone: (208) 769-1525  
Fax: (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 this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 38, Chapter 1, including Section 38-132, Idaho Code, and Title 38, Chapter 4, including Section 38-402, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

<b>PUBLIC HEARINGS ON PROPOSED RULE</b>		
<b>Tuesday, August 7, 2018 5:00 p.m. (MDT)</b>	<b>Wednesday, August 8, 2018 5:00 p.m. (PDT)</b>	<b>Thursday, August 9, 2018 5:00 p.m. (PDT)</b>
<b>Hunt Lodge - Holiday Inn 210 N. 3rd Street McCall, ID 83638</b>	<b>Helgeson Place Hotel Suites 125 Johnson Ave. Orofino, ID 83544</b>	<b>IDL Mica Supervisory Area Office 3528 W. Industrial Loop Coeur d'Alene, ID 83815</b>

The hearing sites 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 Idaho Department of Lands is preparing to amend select fire protection standards and introduce new fire protection standards to IDAPA 20.04.01, "Rules Pertaining to Forest Fire Protection," specific to forest operation activities conducted on forest lands. During the 2015 fire season, the Department worked with forest landowners, logging contractors, forest industry representatives, and others to develop and implement fire protection best practices to lessen the risk of fire starts from forest operations on forest lands. Post-fire season reviews were conducted to discuss the effectiveness of the fire protection best practices and the need to update specific standards in IDAPA 20.04.01, "Rules Pertaining to Forest Fire Protection."

After further review of those Rules and follow-up meetings in 2016 and 2017 with fire managers, forest landowners, logging contractors, and forest industry representatives, the Department entered into negotiated rulemaking to develop fire protection standards specific to forest operations. At the conclusion of negotiated rulemaking, the Department determined a need to enter into proposed rulemaking to amend the fire protection requirements for following sections: Spark Arresters; Fire Tools and Fire Extinguishers; and Fire Crews. In addition, the Department will introduce new fire protection requirements for forest operation activities involving cable logging operations and the use of metal tracked harvesters to include on-site water supply, fire watch service and operation area fire prevention practices.

**FEE SUMMARY:** There are no imposed fees or charges to the public associated with the administration of the proposed rule.

**FISCAL IMPACT:** No fiscal impact to the state general fund is anticipated as a result of this rulemaking.

**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 October 4, 2017 Idaho Administrative Bulletin, [Vol 17-10, page 334](#).

**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: The Department will adopt the spark arrester standards established by the 2012 San Dimas Technology & Development Center (SDTDC) publications titled Spark Arrester Guide – General Purpose and Locomotive (GP/ Loco), Spark Arrester Guide –

Multiposition Small Engine (MSE) and Spark Arrester Guide – Off Highway Vehicles (OHV) as the fire protection standard for internal combustion engines operating within the forest environment. Due to the length of these publications, incorporating the full text of these documents into the rule would impose a significant financial burden to the Department for rule publication purposes. Electronic copy of these publications are available for review at the following website: [https://www.fs.fed.us/t-d/programs/fire/spark\\_arrester\\_guides/index.htm](https://www.fs.fed.us/t-d/programs/fire/spark_arrester_guides/index.htm).

Printed copies or bound copies may be viewed at any Idaho Department of Lands District Office or requested through SDTDC, 444 E. Bonita Ave., San Dimas, CA 91773.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact JT Wensman, Bureau Chief – Fire Management (208) 769-1525. Materials pertaining to the proposed rulemaking, including any available preliminary rule drafts, can be found on the Idaho Department of Lands website at the following web address: <https://www.idl.idaho.gov/rulemaking/20.04.01/index.html>.

Submission of written comments regarding this proposed rulemaking should be directed to the undersigned or to the Idaho Department of Lands website at the website address as noted and must be delivered on or before August 22, 2018.

DATED this 1st day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 20-0401-1701

**000. AUTHORITY.**

~~*These rules are adopted pursuant to the rulemaking authority granted in*~~ This chapter is adopted under the legal authority of Sections 38-115, 38-132, 38-402, 58-104(6), 58-105, and 67-5201 et seq., Idaho Code. ~~(10-28-91)~~( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 20.04.01, “Rules Pertaining to Forest Fire Protection.” ( )

**02. Scope.** These rules govern requirements pertaining to forest fire protection. ( )

**002. WRITTEN INTERPRETATION.**

The Idaho Department of Lands maintains written interpretations of its rules that may include, but not be limited to, written procedures manuals and operations manuals, Attorney General’s formal and informal opinions, and other written guidance that pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals, Attorney General’s opinions, and other written interpretations, if applicable, are available for public inspection and copying at the main office of the Idaho Department of Lands. ( )

**003. ADMINISTRATIVE APPEALS.**

Any person aggrieved by any final decision or order of the BOARD shall be entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, (the Administrative Procedure Act) and IDAPA 20.01.01.000, et seq., “Rules of Practice and Procedure Before the State Board of Land Commissioners.” ( )

**004. INCORPORATION BY REFERENCE.**

**01. Incorporated Document.** IDAPA 20.04.01 adopts and incorporates by reference the full text of the following documents published by the San Dimas Technology & Development Center (SDTDC). ( )

**a. Spark Arrester Guide – General Purpose and Locomotive (GP/Loco), Volume 1, September 2012, 1251 1809-SDTDC.** ( )

**b. Spark Arrester Guide – Multiposition Small Engine (MSE), Volume 2, August 2012, 1251 1808-SDTDC.** ( )

**c. Spark Arrester Guide – Off- Highway Vehicles (OHV), Volume 3, April 2012, 1251 1805-SDTDC.** ( )

**02. Printed and Bound Copies.** Printed copies or bound copies may be viewed at any District Office or requested through SDTDC, 444 E. Bonita Ave, San Dimas, 91773. ( )

**005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.**

The principal place of business of the Idaho Department of Lands is in Boise, Idaho. The office is located at 300 North 6th Street, Suite 103, Boise, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, ID 83720-0050. The telephone number is 208-334-0200. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

This rule is subject to and in compliance with the provisions the Public Records Act, Title 74, Chapter 1, Idaho Code. ( )

~~007.~~ -- 009. (RESERVED)

**010. DEFINITIONS.**

**01. Block.** A piece of logging equipment where steel rope or cable is actively turning the block's pulley and used as part of a cable logging/yarding system for the specific purposes of establishing tail hold anchor points, intermediate support of main lines, or carriage haul-back capability for the purposes of yarding or hauling of logs to a log landing for transportation to a mill or processing facility. ( )

**02. Cable or Cable Assisted Logging.** A harvest system for felling or yarding of forest product materials consisting of the use of a cable assisted harvester or the use of a yarder, spar tree, or intermediate support with motorized or non-motorized carriage to transport logs to the landing for further processing purposes. ( )

**03. Closed Fire Season.** The period from May 10 to October 20, inclusive, of each year or as designated by the Director due to conditions of unusual fire danger pursuant to Section 38-115, Idaho Code. ( )

~~014.~~ **Department.** The Idaho Department of Lands ~~located at 300 North 6th Street, Suite 103, Boise, ID, P.O. Box 83720, Boise, ID 83720-0050.~~ (10-28-91)( )

~~025.~~ **Director.** The director of the Idaho Department of Lands or his authorized representative. (10-28-91)

~~036.~~ **District.** A designated forest protective district. (10-28-91)

~~047.~~ **Fire Warden.** A duly appointed fire warden or deputy. (10-28-91)

~~058.~~ **Forest Land.** Any land which has upon it sufficient brush or flammable forest growth of any kind or size, living or dead, standing or down, including debris or growth following a fire or removal of forest products, to constitute a fire menace to life (including animal) or property. (10-28-91)

**09. Forest Operation.** An activity or service conducted on forest lands involving any of the operations



as described below where a Certificate of Compliance is required pursuant to Section 38-122, Idaho Code. ( )

**a.** The harvesting of trees using equipment that includes, but is not limited to, felling, bucking, yarding, delimiting, and decking operations; ( )

**b.** Thinning or mastication operations for stand improvement, stand density management or fuel reduction purposes; ( )

**c.** Road construction or reconstruction of existing roads including installation or improvement of bridges, culverts or structures; and ( )

**d.** Slash management including chipping, grinding, or other mechanized reduction activities. ( )

**10.** **Metal-Tracked Harvester.** Any machine with metal tracks used to fall, bunch or process trees into forest products at the stump. ( )

**11.** **Operator.** A person who conducts a forest operation. ( )

**12.** **Operating Area.** That area where a forest operation is taking place. ( )

~~06~~**13.** **Person.** Includes any person or persons, and any corporation, firm or other entity. (10-28-91)

~~07~~**14.** **Range Land.** Any land that is not cultivated and that has upon it native grasses or other forage plants making it best suited for grazing of domestic and wild animals and which land is adjacent to or intermingled with forest land. (10-28-91)

~~08~~**15.** **Slash.** Brush, severed limbs, poles, tops and/or other waste material incident to such cutting or to the clearing of land that are four (4) inches and under in diameter. (10-28-91)

~~09~~**16.** **State.** State of Idaho. (10-28-91)

**011. -- 0219.** (RESERVED)

**020.** **VARIANCE.**

If conditions or activities require the application of practices that differ from those prescribed in these rules, the Operator must obtain a variance prior to employing any of those differing practices. ( )

**01.** **Obtaining a Variance.** In order to obtain a variance, the Operator must submit a written request for a variance to the local Fire Warden. The request shall include the following: ( )

**a.** A description of the specific Operating Area where the variance is being requested; ( )

**b.** The particular conditions that necessitate a variance; ( )

**c.** A detailed description of the alternative practice; and ( )

**d.** A detailed description of how the alternate practice, if applied, will provide fire protection that is equal to or greater than the fire protection provided by the standards set forth in these rules. ( )

**02.** **Department Response to Request for Variance.** Within five (5) business days from receipt of the variance request, the Department shall evaluate the request and notify the Operator in writing of the Department's determination to allow or disallow the variance request. ( )

**021. -- 029.** (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

080. SPARK ARRESTERS.

01. **Requirements.** The steam or internal combustion engines referred to in Section 38-121, Idaho Code, shall be equipped with properly installed, maintained, and effectively working spark arresters ~~as categorized below:~~ that comply with the standards set forth in the San Dimas Technology and Development Center's "Spark Arrester Guide"(s). (10-28-91)(    )

~~a. Railroad Locomotives. The spark arrester must be eighty percent (80%) efficient in retention or destruction of all carbon particles twenty three thousandths (.023) inch in diameter or larger for twenty to one hundred percent (20%-100%) of the locomotive engine's exhaust flow rate. The total manifold exhaust leg-back pressure cannot exceed three (3) inches of mercury. (10-28-91)~~

~~b. Portable Power Saws. The spark arrester shall meet the standards set forth in the Society of Automotive Engineers (SAE) Recommended Practice J335b, "Multi-position Small Engine Exhaust System Fire Ignition Suppression." and be listed in the most recent "Spark Arrester Guide" as having been approved as meeting above standard. Copies of the "Spark Arrester Guide" may be viewed at offices of the Department. (10-28-91)~~

~~c. Other Engines. The spark arrester shall meet the standards set forth in the publication of the USDA Forest Service, entitled "Standard 5100-1a for Spark Arresters of Internal Combustion Engines," as amended under date of July 1970, and be listed in the most recent "Spark Arrester Guide" as having been approved as meeting above standard. Copies of the "Spark Arrester Guide" may be viewed at offices of the Department. (10-28-91)~~

02. **Exemptions.** The following are exempt from the requirements of the rule: (10-28-91)

a. Turbo-charged internal combustion engines in which one hundred percent (100%) of the exhaust gases pass through the turbo-charger. (10-28-91)

b. Engines of passenger-carrying vehicles and light trucks, equipped with baffle-type muffler and tailpipe through which all exhaust gasses pass, that are kept in good repair. (10-28-91)

c. Engines of heavy-duty trucks equipped with a vertical exhaust stack and muffler extending above the cab of the vehicle. (10-28-91)

d. Engines of water pumping equipment used in firefighting. (10-28-91)

e. Engines of helicopters and other aircraft. (10-28-91)

(BREAK IN CONTINUITY OF SECTIONS)

100. FIRE TOOLS AND FIRE EXTINGUISHERS.

During closed fire season the following fire tool requirements shall apply: (10-28-91)

01. **Basic Fire Cache.** Every ~~person or entity~~ Operator engaged in any ~~activity in forests of the state~~ Forest Operation on Forest Lands shall have available for firefighting purposes ~~one (1) basic fire cache for each ten (10) persons so engaged. A basic fire cache shall consist of two (2) axes, five (5) shovels, three (3) pulaski tools, and two (2) water buckets, all in good condition and located at a point immediately accessible for firefighting purposes. The fire cache tools shall be contained in a closed box marked "FOR FIRE USE ONLY."~~ the number of tools and tool boxes set forth in Table 1. A Forest Operation having more than ten (10) people must use multiples of any of the columns in the table to arrive at a tool distribution equal to or in excess of the number of people in the Forest Operation.

<b>TABLE 1</b>			
<u>People in Operation</u>	<u>2 - 5</u>	<u>6 - 8</u>	<u>9 - 10</u>
<u>Tool Box</u>	<u>1</u>	<u>1</u>	<u>1</u>
<u>Shovels</u>	<u>2</u>	<u>4</u>	<u>5</u>
<u>Pulaskis</u>	<u>2</u>	<u>4</u>	<u>4</u>
<u>5 gallon pump cans or bladder bags</u>	<u>1</u>	<u>1</u>	<u>2</u>

~~(10-28-91)~~( )

**a.** The tool boxes required by this rule shall be clearly marked “FOR FIRE USE ONLY”; and ( )

**b.** The tools required by Subsection 100.01 shall be in a location immediately accessible for firefighting purposes, maintained in a serviceable condition and be fully functional at the time of deployment. ( )

**02. Warming Fires or Campfires.** Except when in designated developed campgrounds or when traveling as a pedestrian, all persons or parties igniting warming fires or campfires shall be equipped with the following: (10-28-91)

**a.** One (1) serviceable shovel at least twenty-four (24) inches in overall length with six (6) inch or wider blade. (10-28-91)

**b.** One (1) water container, capacity one (1) gallon or more ~~(motorcycle crash helmets qualify)~~. ~~(10-28-91)~~( )

~~**03. Motorcycles, Trailbikes.** The above fire tool requirements apply to all operators of motorcycles, trail bikes, all-terrain vehicles, and similar type motorized vehicles, and persons traveling with pack animals. (10-28-91)~~

**043. Power Equipment.** Each unit of mobile or stationary power equipment other than portable power saws, trail bikes, motorcycles, all-terrain vehicles and similar type vehicles operating on forest lands of the state shall be equipped with a minimum of one (1) chemical fire extinguisher rated by the Underwriters Laboratory as not less than 4-BC. (10-28-91)

**054. Portable Power Saw.** Any person using a portable power saw on forest land in the state shall have the following immediately available for the prevention and suppression of fire: (10-28-91)

**a.** A fully charged operable fire extinguisher of at least eight (8) ounce minimum capacity. (10-28-91)

**b.** A serviceable round-pointed size zero (0) or larger shovel. (10-28-91)

**101. -- 109. (RESERVED)**

**110. FIRE CREWS.**

~~On all activities on forest lands of the state, When engaged in a Forest Operation on Forest Lands during closed fire season, the person responsible for same the Forest Operation shall designate a fire crew and a fire foreman, with powers to act for his their employer, to take immediate initial action within the scope of their knowledge, skills and abilities and make a reasonable effort to suppress any fire starting on the activity area. Any or all personnel shall be at all times in readiness and immediately shall go to any fire which originates on the operation, with or without instructions Operating Area without compromising the safety of the crew.~~ ~~(10-28-91)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

121. -- 129. (RESERVED)

**130. WATER SUPPLY AND EQUIPMENT.**

Every Operator conducting a Forest Operation using a cable logging system or a metal tracked harvester during the period of July 1st through September 30th annually shall provide the following water supply and fire suppression equipment in the Operating Area. ( )

**01. Water Supply.** ( )

**a.** The water supply must consist of a self-propelled motor vehicle or trailer equipped with a water tank containing not less than two hundred (200) gallons of water. ( )

**b.** Trailers used for this purpose shall be equipped with a functional hitch attachment and have a serviceable tow vehicle immediately available to provide for timely fire suppression response. ( )

**02. Water Delivery.** ( )

**a.** Water pump. The size and capacity of the water pump must be sufficient to provide a discharge of not less than twenty (20) gallons per minute when pumping through fifty (50) feet of hose of not less than three quarter (3/4) inch inside diameter with an adjustable nozzle at pump level. ( )

**b.** Hose and nozzle. The Operator must have at least five hundred (500) feet of serviceable hose of not less than three quarter (3/4) inch inside diameter and a nozzle. ( )

**03. Readiness.** ( )

**a.** All hose, motor vehicles, trailers, tanks, nozzles and pumps shall be kept ready for immediate use during active operations, including fire watch service as set forth in Section 140 of these rules. ( )

**b.** The water supply, pump, a minimum of two hundred (200) feet of hose packaged in a suitable manner for immediate deployment, and the nozzle shall be maintained as a connected, operating unit ready for immediate use. ( )

**04. Water Supply and Equipment Exemption.** A Forest Operation conducted under an Option 1 Certificate of Compliance is exempt from the water supply and equipment requirements of Section 130. ( )

131. -- 139. (RESERVED)

**140. FIRE WATCH SERVICE.**

Every Operator engaged in a Forest Operation within a Stage 2 proclamation area shall provide Fire Watch Service in the Operating Area. ( )

**01. Duties and Requirements.** Fire Watch Service shall consist of at least one (1) person who shall: ( )

**a.** Constantly be on duty for three (3) hours after all power-operated equipment has been shut down for the day. ( )

**b.** Visually observe the Operating Area where activity occurred during the day. ( )

**c.** Have adequate equipment for transportation and communications to summon fire-fighting assistance in a timely manner; and ( )

d. Immediately respond to any fire in the Operating Area to initiate such fire suppression actions to suppress the fire within the scope of their knowledge, skills and abilities. ( )

02. Fire Watch Service Exemption. A Forest Operation conducted under an Option 1 Certificate of Compliance is exempt from the fire watch service requirements of Section 140. ( )

**141. -- 149. (RESERVED)**

**150. OPERATION AREA FIRE PREVENTION.**

To prevent the spread of fire on or from an Operating Area, every Operator conducting a Forest Operation during the period of July 1st through September 30th, annually, shall comply with the following precautions: ( )

01. Cable or Cable Assisted Logging. The following practices and equipment are required by the operator when conducting a cable logging operation on forest land. ( )

a. Clear the ground of all flammable debris for not less than ten (10) feet slope distance from the point directly below any block. ( )

b. Prevent moving lines from rubbing on rock or woody material in such a way to cause sparks or sufficient heat that may cause fuel ignition. ( )

c. Provide a water supply that complies with the capacity, pump, hose, nozzle and readiness requirements set forth in Section 130 of these rules. ( )

d. Provide at each Block: ( )

i. One (1) pump equipped can or bladder containing not less than five (5) gallons of water; and( )

ii. One (1) round pointed size zero (0) or larger shovel in a serviceable condition. ( )

**151. -- 999. (RESERVED)**

## **IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION**

### **26.01.20 – RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES**

**DOCKET NO. 26-0120-1701**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 67-4210, 67-4223, and 67-4249, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 148 through 150](#).

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

There is no fiscal impact, as this rule change clarifies the current enforcement practice at IDPR.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Anna Canning, Management Services Administrator, (208) 514-2252.

Dated this 23rd day of August, 2018.

Anna Canning  
Management Services Administrator  
Idaho Department of Parks and Recreation  
5657 Warm Springs Avenue  
P.O. Box 83720  
Boise, ID, 83720-0065  
(208) 514-2252

**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 67-4210, 67-4223, and 67-4249, 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 July 18, 2018.

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

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

The rule change clarifies that failure to properly display proof of payment of motor vehicle entrance and camping fees may result in a surcharge assessment.

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

The rule change would not impose a new fee or increase an existing fee.

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

There is no fiscal impact, as this rule change clarifies the current enforcement practice at IDPR.

**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 October 4, 2017 Idaho Administrative Bulletin, [Volume 17-10, page 390](#).

**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 Anna Canning, Management Services Administrator, (208) 514-2252.

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 July 25, 2018.

DATED this 10th day of May, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0120-1701

151. PARKING VIOLATIONS.

**01. Land or Facilities Administered by the Department.** No person shall stop, stand, or park a motor vehicle or trailer anywhere within land or facilities administered by the Department unless proof of payment of all required fees or other lawful authorization for entry is plainly visible and properly displayed. (4-4-13)

**02. Designated Campgrounds.** No person shall stop, stand, or park a motor vehicle within designated campgrounds unless proof of payment of the applicable campsite fees as set forth in Section 250 of this chapter is plainly visible and properly displayed on either the lower windshield or dashboard of the driver's side of the vehicle. (4-4-13)

**03. Designated Overnight Use Area.** Except for authorized campers, no person shall stop, stand, park, or leave a motor vehicle or trailer unattended outside day use hours unless the motor vehicle or trailer is in a designated overnight use area and proof of payment of the overnight-use fee is plainly visible and properly displayed. (4-4-13)

**04. Fee Collection Surcharge.** Any person stopping, standing, or parking a motor vehicle or trailer without payment or properly displaying proof of payment of all required fees is subject to the fee collection surcharge as provided in Subsection 225.06 of this chapter. (~~4-4-13~~)(    )

**05. Citations for Violations.** Citations for violations of this Section may be issued to the operator of the motor vehicle. If the operator cannot be readily identified, the citation may be issued to the registered owner or lessee of the motor vehicle, subject to the provisions of Section 67-4237, Idaho Code. (4-4-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

225. FEES AND SERVICES.

**01. Authority.** (3-13-97)

**a.** The Board shall adopt fees for the use of lands, facilities, and equipment. Visitors shall pay all required fees. (3-27-13)

**b.** Park managers or designees may set fees for goods available for resale and services provided by staff to enhance the users experience unique to the individual park. Fees for lands, facilities, and equipment unique to an individual park will be posted at that site. (3-27-13)

**02. General Provisions.** All fees in this chapter are maximum fees unless otherwise stated. Actual fees charged shall be established by Board Policy. (3-7-03)

**03. Camping.** Camping fees include the right to use designated campsites and facilities for the period camp fees are paid. Utilities and facilities may be restricted by weather or other factors. (3-16-04)

**04. Group Use.** (7-1-93)

**a.** Groups of twenty-five (25) persons or more, or any group needing special considerations or deviations from these rules shall obtain a permit. Permits may be issued after arrangements have been made for proper sanitation, population density limitations, safety of persons and property, and regulation of traffic. (3-30-06)



**b.** Permits for groups of up to two hundred fifty (250) people may be approved by the park manager with thirty (30) days advance notice. Permits for groups of two hundred fifty (250) or more people may be approved by the Director with forty-five (45) days advance notice. (3-27-13)

**c.** The motor vehicle entrance fee may be charged to groups entering a designated area for a non-camping visit. (3-27-13)

**05. Fees and Deposits.** Fees and deposits may be required for certain uses or the reservation of certain facilities unique to an individual park and will be posted at that site. (3-30-06)

**06. Fee Collection Surcharge.** A ten dollar (\$10) surcharge may be added to all established fees when the operator of a motor vehicle or responsible party of a camping unit fails to pay all required fees or fails to properly display proof of payment for required fees prior to entering a park area or occupying a campsite. If the surcharge is assessed, and the operator of the vehicle or responsible party is not present, all required fees in addition to the ten dollar (\$10) surcharge will be assessed against the registered owner of the motor vehicle or camping unit. ~~(3-27-13)~~( )

**07. Admission Fees.** A maximum per person fee of ten dollars (\$10) may be charged for internal park facilities which provide an educational opportunity or require special accommodations. (3-10-00)

**08. Cooperative Fee Programs.** The Department may collect and disperse fees in cooperation with fee programs of other state and federal agencies. (3-10-00)

**09. Encroachment Permit Application Fee.** The Department may assess an encroachment application fee as set by the Board to cover administrative costs incurred by the Department in reviewing the application and the site, and in preparing the appropriate document(s). (3-27-13)

**IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION**  
**26.01.23 – RULES GOVERNING FILMING WITHIN IDAHO STATE PARKS**  
**DOCKET NO. 26-0123-1701**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 67-4210 and 67-4223, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 151 through 153](#).

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

There is no fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Keith Hobbs, Operations Division Administrator, (208) 514-2450.

Dated this 23rd day of August, 2018.

Keith Hobbs  
Operations Division Administrator  
Idaho Department of Parks and Recreation  
5657 Warm Springs Avenue  
P.O. Box 83720  
Boise, ID, 83720-0065  
(208) 514-2450

**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 67-4210 and 67-4223, 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 July 18, 2018.

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:

This rule change amends rules governing commercial film production in Idaho State Parks to better define the permitting requirements of commercial photographers and to limit existing permitting requirements on casual photographers.

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

The rule change would not impose a new fee or increase an existing fee.

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

There is no fiscal impact.

**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 October 4, 2017 Idaho Administrative Bulletin, [Volume 17-10, page 391](#).

**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 Keith Hobbs, Operations Administrator, (208) 514-2450.

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 July 25, 2018.

DATED this 30th day of May, 2018.

[LINK: LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0123-1701

**000. LEGAL AUTHORITY.**

These rules are promulgated by the Idaho Parks and Recreation Board pursuant to Section 67-5201, et seq., Idaho Code, and Sections 67-4210 and 67-4223, Idaho Code, in order to establish procedures for the issuance of permits for Commercial filming within state parks. (7-1-93)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

Certain terminology and phrases used in these rules shall have the following meanings unless a different meaning is expressly provided or unless the context clearly indicates otherwise. (7-1-93)

**01. Applicant.** An individual or organization who submits an application to the Department ~~to~~ for Commercial filming within state parks, ~~for other than personal or news purposes~~ or within lands managed by the Department. (7-1-93)(    )

**02. Commercial Filming.** ~~Unless as defined in Exempt Filming, all recording of moving images by use of film, magnetic, digital media or other recording media, for the purpose of generating revenue. Or the recording of still or moving images that makes use of sets, props or models, or requires on-site management to protect park resources or minimize visitor conflicts.~~ (    )

**023. Department.** The Idaho Department of Parks and Recreation. (7-1-93)

**034. Director.** The director of the Idaho Department of Parks and Recreation or the designee of the director. (7-1-93)

**05. Exempt Filming.** ~~All recording of moving images by use of film, magnetic, digital media or other recording media, not for the purpose of generating revenue, or still photography which does not require the use of sets, props or models, or require on-site management to protect park resources or minimize visitor conflicts. Filming for news purposes is considered Exempt Filming.~~ (    )

**046. Film and Filming.** ~~Still and movie camera filming and video taping~~ The recording of moving or still images by use of film, magnetic, digital media or other recording media. (7-1-93)(    )

**057. Filmmaker.** An applicant who has received approval ~~to~~ for Commercial filming within state parks, or lands managed by the Idaho Department of Parks and Recreation through the issuance of a filming permit by the director. (7-1-93)(    )

**011. -- 049. (RESERVED)**

**050. FILMING WITHIN STATE PARKS.**

The Department recognizes the desire of individuals and organizations to film within the state parks, or within lands managed by the Department. Individuals and organizations may film within state parks ~~in a manner which is not disruptive to park users or resources when the filming is for personal or news purposes~~ without a filming permit, when the filming purpose is consistent with the definition of Exempt Filming. Individuals and organizations that desire to conduct Commercial filming within state parks, ~~for other than personal or news purposes~~ may do so only after acquiring a filming permit, in accordance with the filming permit requirements of Section 100 of this chapter. (7-1-93)(    )

**051. -- 099. (RESERVED)**

**100. FILMING PERMIT APPLICATION, FEE, AND CONDITIONS.**

Persons or organizations that desire to conduct Commercial ~~filming~~ within a state park, ~~for other than personal or news purposes~~ or within lands managed by the Department, shall complete and submit a film permit application, on forms provided by the director, to the Idaho Department of Parks and Recreation, Statehouse Mail, Boise, ID 83720 ~~Park Manager of the park, or parks, in which the filming will take place.~~ (7-1-93)(    )

**01. Application Fee.** Each application shall be accompanied by a nonrefundable application fee of one hundred dollars (\$100) which shall be in the form of a check or money order payable to the Idaho Department of Parks and Recreation. (7-1-93)

**02. Conditions.** All applicants shall agree to film in a manner which is compatible with the activities of park visitors, does not damage facilities or resources, does not disrupt wildlife, does not imply the endorsement of the Department for the content of the film, acknowledges the cooperation of the Department, and conforms with all of the applicable statutes, rules, policies, and procedures of the Department and the instructions of the department staff who supervise the filming. (7-1-93)

**101. -- 149. (RESERVED)**

**150. APPROVAL OR DISAPPROVAL OF FILM PERMIT APPLICATION.**

The director shall approve or disapprove a film permit application and establish the filming locations, time periods, and conditions for an approved application. The director may require an approved applicant to submit the following to the Department prior to the issuance of a film permit: (7-1-93)

**01. Fees.** Fees payable to the Idaho Department of Parks and Recreation in the form of a check or money order in an amount, as determined by the director, which will at a minimum, cover\* the charges for the facilities to be used by a filmmaker and any staff costs to be incurred by the Department due to the filming that are beyond the regular responsibilities of the staff of the Department. (7-1-93)(    )

**02. Security.** A bond or damage deposit payable to the Idaho Department of Parks and Recreation in an amount, as determined by the director, which is sufficient to cover any damages to park resources or facilities which may occur during the filming; and (7-1-93)

**03. Proof of Insurance.** Certification that an approved applicant has liability insurance in an amount, as determined by the director, which is sufficient to cover any liability costs associated with the actions of a filmmaker during filming, and that the State of Idaho and the Idaho Department of Parks and Recreation be named as insured parties. (7-1-93)